

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

Editor's Note: The Office of the Attorney General approved certain Sections or portions of Sections within the following Notice of Final Rulemaking and disapproved others. For clarity, the Office of the Secretary of State – Public Services Division has removed the disapproved Sections or portions of Sections.

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

[R07-419]

PREAMBLE

1. Sections Affected

Article 8
R2-12-801
R2-12-802
R2-12-803
R2-12-804
R2-12-805
R2-12-806
R2-12-807
R2-12-808
R2-12-809
R2-12-810
R2-12-811

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. Title 23, Chapter 3, Article 4

Implementing statute: A.R.S. §§ 23-564(D), 23-568(A), and 23-575(E)(4) and (F)

3. The effective date of the rules:

January 29, 2008

4. A list of all previous notices appearing in the *Register* addressing the final rule:

Notice of Rulemaking Docket Opening: 13 A.A.R. 39, January 5, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 2134, June 22, 2007

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Kevin Tyne

Address: Office of the Secretary of State
1700 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-4919

Fax: (602) 542-1575

E-mail: ktyne@azsos.gov

or

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Name: Gene Palma
Address: Office of the Secretary of State
1700 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 542-3060
Fax: (602) 542-7386
E-mail: gpalma@azsos.gov

6. An explanation of the rule, including the agency's reasons for initiating the rule:

In accordance with A.R.S. §§ 23-564(D), 23-568(A), and 23-575(E)(4) and (F), the Secretary of State shall adopt rules to implement A.R.S. Title 23, Chapter 3, Article 4 and pursuant to Title 41, Chapter 6.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

There will be a positive impact on small business and consumers. The proposed registration of Professional Employer Organizations will give businesses and consumers more confidence in Professional Employer Organizations. Additionally, the Secretary of State's ability to regulate the PEO industry will enhance protection of businesses and workers in Arizona and prevent the unregistered operation of a PEO.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

No changes were made.

11. A summary of the comments made regarding the rule and the agency response to them:

No comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

Not applicable

14. Were these rules previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 8. PROFESSIONAL EMPLOYER ORGANIZATIONS

Section

| | |
|-------------------|--|
| <u>R2-12-801.</u> | <u>Definitions</u> |
| <u>R2-12-802.</u> | <u>Registration</u> |
| <u>R2-12-803.</u> | <u>Limited Registration</u> |
| <u>R2-12-804.</u> | <u>Late Registration</u> |
| <u>R2-12-805.</u> | <u>Registration Fees</u> |
| <u>R2-12-806.</u> | <u>Complaints</u> |
| <u>R2-12-807.</u> | <u>Investigations</u> |
| <u>R2-12-808.</u> | <u>Administrative Hearings</u> |
| <u>R2-12-809.</u> | <u>Restriction, Revocation or Probation of Registration</u> |
| <u>R2-12-810.</u> | <u>Requirements for Reinstatement of a Restricted, Revoked or Probationary Registration After the Specified Term of Discipline</u> |

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R2-12-811. Duties and Responsibilities

ARTICLE 8. PROFESSIONAL EMPLOYER ORGANIZATIONS

R2-12-801. Definitions

Unless the context otherwise requires, the definitions of terms contained in A.R.S. § 23-561 are applicable in this Article. Additionally, the following definitions apply in this Article, unless otherwise specified in these rules:

1. "Application" means such forms, materials, fees, and information required to enable the Secretary of State to ascertain if an applicant meets the requirements of registration.
2. "Common Control" means having charge of those activities that are inherent in operating a PEO or PEO group.
3. "Controlling Person" means any organization or person that possesses, directly or indirectly, through financial ownership or otherwise, the power to direct, or cause the direction of, the management or policies of the PEO.
4. "PEO" means professional employer organization.
5. "Parent PEO" means an organization or person that holds common control over two or more PEOs and is the designated entity under which a group registration is filed.
6. "Professional Employer Group" means two or more professional employer organizations that are under common control of a parent PEO and that operate under a group registration issued under A.R.S. § 23-566.

R2-12-802. Registration

- A. Each applicant shall apply to the Secretary of State in writing upon forms available from the Secretary of State. Each completed application shall contain the required documentation identified in each type of registration pursuant to A.R.S. §§ 23-563, 23-564, 23-565, 23-566 and 23-567 and each application shall be verified by oath or affidavit by the applicant, and shall be accompanied by the fees required by these rules.
- B. A certificate shall be issued to an applicant who submits a complete application if the Secretary of State determines that the applicant meets the requirements of registration.
- C. A written notice of denial of registration shall be provided to an applicant who submits a complete application if the Secretary of State determines that the applicant does not meet the requirements of registration.
- D. A written notice shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within 30 days or such greater time as specifically provided in the notice of deficiency and otherwise meets all requirements for registration as determined by the Secretary of State.
- E. An applicant shall respond within 30 days to all requests of the Secretary of State for further information regarding an application. Failure to provide the requested information within 30 days or such greater time as specifically provided in the Secretary of State's request shall be grounds for the denial of an application.
- F. An applicant who is required to deposit a bond, an irrevocable letter of credit or securities in a depository, to fulfill the requirements of A.R.S. § 23-569(A)(2) shall submit the bond, an irrevocable letter of credit or securities with the Secretary of State's office.
- G. Upon receiving a bond, an irrevocable letter of credit or securities the Secretary of State's office shall deposit the asset with the State of Arizona Treasurer's Office who shall confirm the transaction by issuing documentation identifying the date and type of deposit.

R2-12-803. Limited Registration

An applicant for limited registration must provide with its application:

1. A copy of the statutory and regulatory PEO requirements of another state in which the PEO applicant is registered and which govern that PEO's out-of-state registration. The governing statutory and regulatory requirements from the other state must be substantially similar to the PEO requirements of Arizona as determined by the Arizona Secretary of State.
2. A certificate or documentation issued by that state's licensing agency showing that the applicant's registration is current and valid and discloses whether the applicant has been subject to any disciplinary actions in that state.
3. A statement signed by a controlling person of the PEO declaring that the PEO meets the requirements of limited registration as provided in A.R.S. § 23-567(A)(1) through (4).

R2-12-804. Late Registration

If renewal registration is not received by the Secretary of State within 120 days after the applicant's completed fiscal year, the applicant shall pay the established registration renewal fee.

R2-12-805. Registration Fees

A. A PEO registering with the Secretary of State shall pay the following fees:

1. If applying for initial registration:
 - a. The initial registration fee shall be \$1,000; and
 - b. The renewal registration fee shall be \$1,000.
2. If applying for group registration:

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- a. The initial group registration fee shall be \$1,000 for the parent employer organization and \$500 for each member of the group; and
- b. The group registration renewal fee shall be \$1,000 for the parent organization and \$500 for each member of the group.
3. If applying for limited registration:
 - a. The initial limited registration fee shall be \$1,000; and
 - b. The limited registration renewal fee shall be \$1,000.

B. All fees are nonrefundable.

R2-12-806. Complaints

A. Any person may file a complaint with the Office of the Secretary of State regarding a PEO. The Secretary of State shall receive any complaints and shall investigate and determine whether action is necessary involving allegations of any misconduct as provided in A.R.S. § 23-575 and these rules.

1. A complaint must be in writing;
2. The complainant shall be clearly identified. If an entity files a complaint an individual shall be identified in the complaint that will serve as a contact person while the investigation of the complaint is conducted;
3. The name of the PEO who has allegedly committed the misconduct must be clearly identified;
4. The nature of the misconduct and the circumstances surrounding the alleged misconduct shall be clearly identified; and
5. Documentation, if any, supporting the allegations shall accompany the complaint.

B. Upon receipt of the complaint the Secretary of State shall mail a copy of the complaint to the PEO in question and request a written response.

C. If a PEO fails to respond within 30 days to a request for information during an investigation the Secretary of State may take action pursuant to A.R.S. § 23-575(E).

R2-12-807. Investigations

A. The Secretary of State or its representative may request information, perform an investigation, audit, or review documents necessary to determine whether a PEO has violated any provision of A.R.S. §§ 23-563 through 23-569 or 23-575 or these rules.

B. Information gathered pursuant to an investigation is confidential and not open to public inspection pursuant to A.R.S. § 23-563(C).

C. The disciplinary record of a PEO is a matter of public record as allowed by law.

R2-12-808. Administrative Hearings

If the Secretary of State denies an application for registration, or restricts, revokes or refuses to renew a registration, or if the Secretary of State places a registrant on probation, upon notification, the registrant may appeal the decision of the Secretary of State pursuant to the procedure provided in A.R.S. Title 41, Chapter 6, Article 10.

R2-12-809. Restriction, Revocation or Probation of Registration

A. If a PEO fails to comply with any of the requirements of registration the Secretary of State may restrict, revoke or place the PEO on probation until such time as the PEO comes into compliance with the registration requirements.

B. If the PEO fails to cure any deficiency within 150 days of the registration renewal date, the Secretary of State may revoke the registration of an applicant.

C. If a PEO fails to comply with any of the duties and responsibilities identified in R2-12-811 the Secretary of State may take action pursuant to A.R.S. § 23-575(E) and (F) until such time as the PEO comes into compliance.

D. Upon restriction of a registration, the holder of the restricted registration shall:

1. Immediately cease soliciting clients for PEO services.
2. Notify each client of the PEO of the PEO's restriction within five days after the effective date of the restriction.

E. Upon revocation of a registration, the holder of the revoked registration shall:

1. Cease all PEO operations immediately.
2. Notify each client of the PEO of the PEO's revocation within two days after the effective date of revocation.

F. Upon the completion of a period of registration restriction or the reinstatement of a registration that was revoked the PEO shall be placed on probation for one year.

R2-12- 810. Requirements for Reinstatement of a Restricted, Revoked or Probationary Registration After the Specified Term of Discipline

A. Unless otherwise specified in a disciplinary order imposing revocation, the disciplined registrant may, after two years from the date of the disciplinary order, petition for the reinstatement of its registration.

B. Unless otherwise specified in a disciplinary order a PEO whose registration has been restricted or put on probation the disciplined registrant shall, at the end of the restriction, or probation, petition for the release from the conditions of restriction or probation.

C. Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a registration after the

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specified term of restriction or revocation of the registration shall:

1. Submit an application for registration complete with all supporting documents as is required when making an initial application for registration demonstrating the applicant meets all current qualifications for registration and compliance with requirements and conditions of registration reinstatement;
2. Submit a Petition for Release from the imposed disciplinary order that documents that all conditions of reinstatement and requirements for re-registration have been fulfilled.
3. Pay the established registration renewal fee;
4. Provide documentation to the Secretary of State to clearly demonstrate the applicant is statutorily qualified to be reinstated to engage in offering PEO services; and
5. Pay all monies due.

R2-12- 811. Duties and Responsibilities

- A.** An applicant or registered PEO shall notify the Secretary of State in writing within 30 days of any conviction, judgment, guilty plea or no contest plea of the applicant or any of the applicant's controlling persons for any violation listed in A.R.S. § 23-575.
- B.** An applicant or registered PEO shall notify the Secretary of State in writing within 30 days of any final action by a state or federal regulatory agency for violations related to the operation of a PEO.
- C.** An applicant or registered PEO shall notify the Secretary of State in writing within 30 days of any determination by any court of competent jurisdiction, including federal courts, located in any state, that the applicant or any of the applicant's controlling persons were found, or pled guilty to fraud related to the operation of a PEO.
- D.** An applicant or registered PEO shall respond to any requests for information and comply with any investigations that are initiated by the Secretary of State.
- E.** An applicant or registered PEO shall notify the Secretary of State in writing within 10 days of the PEO's failure to stay current with obligations that relate to payroll, payroll-related taxes, workers' compensation insurance premiums for covered employees and employee benefits.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION**

[R07-428]

PREAMBLE

1. **Sections Affected**
R9-1-412
- Rulemaking Action**
Amend
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statutes: A.R.S. §§ 36-132(A)(1), (A)(17), and 36-136(F)
Implementing statutes: A.R.S. §§ 36-405 and 36-406
3. **The effective date of the rule:**
February 2, 2008
4. **A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 12 A.A.R. 4248, November 17, 2006
Notice of Proposed Rulemaking: 13 A.A.R. 3006, August 31, 2007
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Rohno Geppert
Program Manager, Office of Special Licensing

Address: Department of Health Services
Division of Licensing Services
Office of Special Licensing
150 N. 18th Ave., Suite 460
Phoenix, AZ 85007

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Telephone: (602) 364-3046
Fax: (602) 364-4769
E-mail: gepperr@azdhs.gov
or
Name: Kathleen Phillips
Rules Administrator and Administrative Counsel
Address: Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams, Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1264
Fax: (602) 364-1150
E-mail: phillik@azdhs.gov

6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

A.R.S. § 36-405 requires the Arizona Department of Health Services (Department) to adopt rules to establish minimum standards and requirements for the construction, modification, and licensure of health care institutions necessary to assure the public health, safety, and welfare. A.R.S. § 36-406 requires the Department to review and authorizes the Department to approve plans and specifications for the construction of or modifications or additions to health care institutions regulated under A.R.S. Title 36, Chapter 4. A.R.S. § 36-421(A) requires an initial license application for a health care institution to include architectural plans and specifications, which are required to meet the minimum standards for licensure within the class or subclass of health care institution for which they are intended.

In R9-1-412, the Department incorporates by reference physical plant health and safety codes and standards. The Department does this in R9-1-412 so that the Department can refer to R9-1-412 in its different sets of licensure rules throughout A.A.C. Title 9 rather than including separate incorporations by reference in each set of licensure rules.

The rulemaking updates the codes and standards incorporated by reference in R9-1-412 by incorporating by reference the International Code Council's *International Building Code* (2006), *International Fuel Gas Code* (2006), *International Mechanical Code* (2006), *International Property Maintenance Code* (2006), *International Fire Code* (2006), *ICC Electrical Code—Administrative Provisions* (2006), *International Energy Conservation Code* (2006), *International Plumbing Code* (2006), *International Private Sewage Disposal Code* (2006), and American National Standard, *Accessible and Usable Buildings and Facilities* (ICC/ANSI A117.1-2003).

The rulemaking also updates the codes and standards by incorporating by reference the American Institute of Architects and Facilities Guidelines Institute, *Guidelines for Design and Construction of Health Care Facilities* (2006) and the National Fire Protection Association, *National Fire Codes* (2006), as updated by *National Fire Codes Supplement* (2006).

The Department is updating the codes and standards in R9-1-412 to reflect current industry standards and to create more consistency between state codes and standards and the codes and standards currently adopted by or planned to be adopted by many local jurisdictions. The rulemaking conforms to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study related to this rulemaking.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

Annual cost/revenue changes are designated as minimal when less than \$5,000, moderate when between \$5,000 and \$50,000, and substantial when greater than \$50,000 in additional costs or revenues. Cost/revenue changes are listed as significant when meaningful or important, but not readily subject to quantification. The extent to which businesses or health care consumers are affected by this rulemaking depends on the health care institution physical plant standards that are currently adopted by the local jurisdictions in which the business operates or the consumers receive health care.

The Department will experience minimal costs to notify local jurisdictions of the new requirements and to purchase the updated codes and standards books. The Department also anticipates deriving a minimal benefit from the new

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rule. By creating more consistency between state codes and standards and the codes and standards currently adopted by or planned to be adopted by many local jurisdictions, the Department expects to save time spent coordinating and reconciling different codes and standards.

The Department anticipates that many local jurisdictions will derive a minimal-to-moderate benefit from the new rule because many local jurisdictions will, like the Department, save time previously spent coordinating and reconciling different codes and standards.

The economic impact of the rulemaking on businesses that own health care institutions depends on what type of health care institutions the business owns, how many health care institutions the business owns, and whether the business is constructing a new health care institution or modifying an existing health care institution. Some of the new requirements will result in cost savings to businesses that own health care institutions while others will result in increased costs. The net effect of the new requirements on a business that owns health care institutions may be a minimal-to-substantial increase in revenue or a minimal-to-substantial increase in costs.

The economic impact of the rulemaking on businesses that design, construct, or modify health care institutions depends on what types of health care institutions the business serves, how many health care institutions the business serves, and the type of services the business provides to health care institutions. Some of the new requirements will result in cost savings to businesses that design, construct, or modify health care institutions while others will result in increased costs. The net effect of the new requirements on a business that designs, constructs, or modifies health care institutions may be a minimal-to-substantial increase in revenue or a minimal-to-substantial increase in costs.

Third-party payers may derive a significant benefit from new requirements that result in savings to businesses that own health care institutions because the savings may be passed along to consumers in the form of lower health care costs and thereby lower third-party payer costs. However, third-party payers may also experience higher costs as a result of the rulemaking. New requirements that result in additional costs to businesses that own health care institutions may increase third-party payer costs if those costs are passed along to third-party payers in the form of higher health care costs to patients.

Consumers of health care services may experience significant savings from new requirements that result in savings to businesses that own health care institutions because the savings may be passed along to consumers in the form of lower health care costs. New requirements that result in additional costs to businesses that own health care institutions may increase consumer health care costs if those costs are passed along to consumers.

The rulemaking should have no direct impact on private and public employment in businesses, agencies, and political subdivisions of this state.

The Department does not have precise data on the number of health care institutions that are small businesses as defined in A.R.S. § 41-1001, but believes that, except hospitals, the majority are small businesses. Currently, the Department does not collect data on the number of employees or gross annual receipts for all the different types of health care institutions. The Department also does not collect data on the number of employees or gross annual receipts for the businesses that design, construct, or modify health care institutions in this state but believes that many are small businesses. Small businesses located or doing business in local jurisdictions that have adopted or will adopt the updated codes and standards incorporated by reference in R9-1-412 should experience a reduction in administrative costs complying with the rule because the Department and the local jurisdictions will be using the same codes and standards to review architectural drawings and specifications. The economic impact associated with complying with the updated codes and standards is the same for small businesses as it is for large businesses.

The rulemaking should not increase or decrease state revenues.

The Department believes that incorporating by reference the most up-to-date codes and guidelines is the least intrusive and least costly method of achieving the purpose of the rulemaking, which is protecting the public health, safety, and welfare by establishing minimum standards and requirements for the physical plants of health care institutions.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

The Department corrected one ungrammatical sentence.

11. A summary of the comments made regarding the rule and the agency response to them:

The Department held an oral proceeding on October 3, 2007, and did not receive any comments regarding the proposed rule.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rule:

In R9-1-412, the Department incorporates by reference the following, with modifications:

R9-1-412(A)(1): International Code Council, *International Building Code* (2006)

R9-1-412(A)(2): International Code Council, *International Fuel Gas Code* (2006)

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- R9-1-412(A)(3): International Code Council, *International Mechanical Code* (2006)
R9-1-412(A)(4): International Code Council, *International Property Maintenance Code* (2006)
R9-1-412(A)(5): International Code Council, *International Fire Code* (2006)
R9-1-412(A)(6): International Code Council, *ICC Electrical Code—Administrative Provisions* (2006)
R9-1-412(A)(7): International Code Council, *International Energy Conservation Code* (2006)
R9-1-412(A)(8): International Code Council, *International Plumbing Code* (2006)
R9-1-412(A)(9): International Code Council, *International Private Sewage Disposal Code* (2006) R9-1-412(A)(10): International Code Council/American National Standard, *Accessible and Usable Buildings and Facilities* (ICC/ANSI A117.1-2003)
R9-1-412(A)(11): American Institute of Architects and Facilities Guidelines Institute, *Guidelines for Design and Construction of Health Care Facilities* (2006)
R9-1-412(A)(12): National Fire Protection Association, *National Fire Codes* (2006), as updated by *National Fire Codes Supplement* (2006)

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 1. DEPARTMENT OF HEALTH SERVICES
ADMINISTRATION**

ARTICLE 4. CODES AND STANDARDS REFERENCED

Section

R9-1-412. Physical Plant Health and Safety Codes and Standards

ARTICLE 4. CODES AND STANDARDS REFERENCED

R9-1-412. Physical Plant Health and Safety Codes and Standards

- A. The following physical plant health and safety codes and standards are incorporated by reference as modified, are on file with the Department and the Office of the Secretary of State, and include no future editions or amendments:
1. International Code Council, International Building Code (~~2000~~) (2006), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3404 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298 Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, with the following modifications:
 - a. Appendices A, B, C, D, G, I, and J are omitted;
 - b. "International Plumbing Code" is replaced with "Arizona Uniform Plumbing Code" each time it appears;
 - c. Section 101.1 is modified by deleting "of [NAME OF JURISDICTION]";
 - d. Section 101.2 is modified by deleting the "Exception";
 - e. Section 101.4.4 is modified by replacing "International Private Sewage Disposal Code" with "Arizona Uniform Plumbing Code";
 - f. Sections 103.1 through 103.3 are omitted deleted;
 - g. Sections 104.1 through 104.9.1 are omitted deleted;
 - h. Sections 105.1 through 105.7 are omitted deleted;
 - i. Sections 106.1 through 106.5 are omitted deleted;
 - j. Sections 107.1 through 107.4 are omitted deleted;
 - k. Sections 108.1 through 108.6 are omitted deleted;
 - l. Sections 109.1 through 109.6 are omitted deleted;
 - m. Sections 110.1 through ~~110.5~~ 110.4 are omitted deleted;
 - n. Sections 111.1 through 111.3 are omitted deleted;
 - o. Sections 112.1 through 112.3 are omitted deleted;
 - p. Sections 113.1 through 113.4 are omitted deleted;
 - q. Sections 114.1 through 114.3 are omitted deleted;
 - r. Sections 115.1 through 115.5 are omitted deleted;
 - s. Section 2113.15 is modified by omitting "or Chapter 24 of the International Residential Code";

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- t. ~~Section 2901.1 is modified by replacing “International Private Sewage Disposal Code” with “Arizona Uniform Plumbing Code”;~~ and
 - ~~u.p.~~ Section 3401.3 is modified by ~~omitting deleting~~ “International Private Sewage Disposal Code,” and “International Residential Code”;
 - q. ~~Appendices A, B, C, D, and G are deleted;~~
 - r. ~~Section K101.1 is modified by deleting “of [NAME OF JURISDICTION]”;~~
 - s. ~~Section K201.3 is modified by deleting “International Residential Code, International Zoning Code”;~~
 - t. ~~Appendix K, Chapters K3, K4, K5, K7, K8, K9, K10, and K11 are deleted; and~~
 - u. ~~Section K1201.1.1 is modified by deleting “the International Residential Code or”;~~
2. International Code Council, International Fuel Gas Code (2000) (2006), published by ~~the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401~~ and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298 Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, with the following modifications:
 - a. ~~“International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears;~~
 - ~~b.a.~~ Section 101.1 is modified by ~~omitting deleting~~ “of [NAME OF JURISDICTION]”;
 - b. ~~Section 101.2 is modified by deleting the “Exception”;~~
 - c. ~~Sections 103.1 through 103.4 are omitted deleted;~~
 - d. ~~Sections 104.1 through 104.8 are omitted deleted;~~
 - e. ~~Sections 106.1 through 106.5.3 are omitted deleted;~~
 - f. ~~Sections 107.1 through 107.5 107.4 are omitted deleted;~~
 - g. ~~Sections 108.1 through 108.7.3 are omitted deleted;~~ and
 - h. ~~Sections 109.1 through 109.7 are omitted deleted;~~
 3. International Code Council, International Mechanical Code (2000) (2006), published by ~~the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401~~ and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298 Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, with the following modifications:
 - a. ~~Appendix B is omitted;~~
 - b. ~~“International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears;~~
 - ~~e.a.~~ Section 101.1 is modified by ~~omitting deleting~~ “of [NAME OF JURISDICTION]”;
 - ~~d.b.~~ Sections 103.1 through 103.4 are ~~omitted deleted;~~
 - ~~e.c.~~ Sections 104.1 through 104.8 are ~~omitted deleted;~~
 - ~~f.d.~~ Sections 106.1 through 106.5.3 are ~~omitted deleted;~~
 - ~~g.e.~~ Sections 107.1 through ~~107.5 107.4~~ are ~~omitted deleted;~~
 - ~~h.f.~~ Sections 108.1 through 108.7.3 are ~~omitted deleted;~~ and
 - ~~i.g.~~ Sections 109.1 through 109.7 are ~~omitted;~~ ~~deleted;~~ and
 - h. ~~Appendix B is deleted;~~
 4. International Code Council, International Property Maintenance Code (2000) (2006), published by ~~the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401~~ and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298 Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, with the following modifications:
 - a. ~~“International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears;~~
 - ~~b.a.~~ Section 101.1 is modified by ~~omitting deleting~~ “of [NAME OF JURISDICTION]”;
 - ~~e.b.~~ Sections 103.1 through ~~103.6 103.5~~ are ~~omitted deleted;~~
 - ~~d.c.~~ Sections 104.1 through ~~104.8 104.7~~ are ~~omitted deleted;~~
 - ~~e.d.~~ Sections 106.1 through 106.5 are ~~omitted deleted;~~
 - ~~f.e.~~ Sections 107.1 through 107.5 are ~~omitted deleted;~~
 - ~~g.f.~~ Sections 108.1 through ~~108.6 108.5~~ are ~~omitted deleted;~~
 - ~~h.g.~~ Sections 109.1 through 109.6 are ~~omitted deleted;~~
 - ~~i.h.~~ Sections 110.1 through 110.4 are ~~omitted deleted;~~
 - ~~j.i.~~ Sections 111.1 through 111.8 are ~~omitted deleted;~~ and
 - k.j. Section 201.3 is modified by ~~omitting deleting~~ “International Zoning Code”;
 - l. ~~Section 602.2 is modified by adding a period after “toilet rooms” and omitting the remainder of the sentence; and~~
 - m. ~~Section 602.3 is modified by omitting the second sentence of the “Exception”;~~
 5. International Code Council, International Fire Code (2000) (2006), published by ~~the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401~~ and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298 Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, with the following modifications:
 - a. ~~Appendix A is omitted;~~
 - b. ~~“International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears;~~

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- ~~e-a.~~ Section 101.1 is modified by ~~omitting~~ deleting “of [NAME OF JURISDICTION]”,
~~d-b.~~ Sections 103.1 through 103.4.1 are ~~omitted~~ deleted,
~~e-c.~~ Sections 104.1 through 104.11.3 are ~~omitted~~ deleted,
~~f-d.~~ Sections 105.1 through ~~105.7.12~~ 105.7.13 are ~~omitted~~ deleted,
~~g-e.~~ Sections 106.1 through ~~106.3~~ 106.4 are ~~omitted~~ deleted,
~~h-f.~~ Sections 108.1 through 108.3 are ~~omitted~~ deleted,
~~i-g.~~ Sections 109.1 through 109.3.1 are ~~omitted~~ deleted,
~~j-h.~~ Sections 110.1 through 110.4 are ~~omitted~~ deleted, and
~~k-i.~~ Sections 111.1 through 111.4 are ~~omitted~~; deleted, and
j. Appendix A is deleted;
6. International Code Council, ICC Electrical Code—Administrative Provisions (2000) (2006), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298 Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, with the following modifications:
a. Section 101.1 is modified by ~~omitting~~ deleting “of [NAME OF JURISDICTION]”;
b. Section 201.3 is modified by deleting “International Residential Code, International Zoning Code”;
c. Chapter 3 is ~~omitted~~ deleted;
d. Chapter 4 is ~~omitted~~ deleted;
e. Chapter 5 is ~~omitted~~ deleted;
f. Chapter 7 is ~~omitted~~ deleted;
g. Chapter 8 is ~~omitted~~ deleted;
h. Chapter 9 is ~~omitted~~ deleted;
i. Chapter 10 is ~~omitted~~ deleted;
j. Chapter 11 is ~~omitted~~ deleted; and
k. Section 1201.1.1 is modified by deleting “the International Residential Code or”;
7. International Code Council, International Energy Conservation Code (2000) (2006), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298 Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, with the following modifications:
a. “International Plumbing Code” is replaced with “Arizona Uniform Plumbing Code” each time it appears;
~~b-a.~~ Section 101.1 is modified by ~~omitting~~ deleting “of [NAME OF JURISDICTION]”, and
~~b.~~ Section 101.4.3 is modified by deleting the “Exception”;
~~e.~~ Section 101.4 is modified by deleting the “Exception”;
8. International Code Council, International Plumbing Code (2006), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, with the following modifications:
a. Section 101.1 is modified by deleting “of [NAME OF JURISDICTION]”;
b. Sections 103.1 through 103.4 are deleted;
c. Sections 104.1 through 104.8 are deleted;
d. Sections 106.1 through 106.6.3 are deleted;
e. Sections 107.1 through 107.5 are deleted;
f. Sections 108.1 through 108.7.3 are deleted;
g. Sections 109.1 through 109.7 are deleted, and
h. Appendix A is deleted;
9. International Code Council, International Private Sewage Disposal Code (2006), published by and available from the International Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795, with the following modifications:
a. Section 101.1 is modified by deleting “of [NAME OF JURISDICTION]”;
b. Sections 103.1 through 103.4 are deleted;
c. Sections 104.1 through 104.8 are deleted;
d. Sections 106.1 through 106.4.3 are deleted;
e. Sections 107.1 through 107.4 are deleted;
f. Sections 108.1 through 108.7.2 are deleted, and
g. Sections 109.1 through 109.7 are deleted;
10. International Code Council, Pub. No. ICC/ANSI A117.1-1998 ICC/ANSI A117.1-2003, American National Standard: Accessible and Usable Buildings and Facilities (1998) (2003), published by the International Code Council, 5203 Leesburg Pike, Suite 708, Falls Church, VA 22041-3401 and available from the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, CA 90601-2298. Code Council, Inc., Publications, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795;

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- ~~8-11.~~ American Institute of Architects and Facilities Guidelines Institute, Guidelines for Design and Construction of Hospital and Health Care Facilities (~~2001 ed.~~) (2006 ed.), published by and available from The American Institute of Architects, 1735 New York Avenue, N.W., Washington, DC 20006, with the following modifications:
- ~~a.~~ In the appendices, the word “should” is replaced with “shall” each time it ~~appears~~ is used; and
- ~~b.~~ ~~Section 1.5.A is omitted;~~
- ~~9-12.~~ National Fire Protection Association, National Fire Codes (~~2001~~) (2006), as updated by National Fire Codes Supplement ~~Part 1 (2001)~~ and National Fire Codes Supplement ~~Part 2 (2001)~~ (2006), published by and available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA ~~02269-9101~~ 02169-9101, with the following modifications:
- a. All annexes and appendices are ~~omitted~~ deleted, except the following:
- i. In NFPA 15, Annexes A, B, and C;
- ii. In NFPA 20, ~~Appendices~~ Annexes A and B;
- iii. In NFPA 70, Annexes ~~A, B, C, and D~~;
- iv. In NFPA 80, Appendices A, B, C, D, E, F, G, H, I, and J;
- v. In NFPA 82, ~~Appendix~~ Annex A;
- vi. In NFPA 90A, ~~Appendices~~ Annexes A and B;
- vii. In NFPA 96, Annexes A and B;
- viii. In NFPA 99, ~~Appendices Annexes A, B, and C and Annexes 1 and 2, D, E, and G~~;
- ix. In NFPA 99B, ~~Appendices Annexes A and B, and D~~;
- x. In NFPA 101, Annex A;
- xi. In NFPA 101B, ~~Appendix~~ Annex A;
- xii. In NFPA 110, ~~Appendices Annexes~~ Annexes A and B;
- xiii. In NFPA 111, ~~Appendix~~ Annex A;
- xiv. In NFPA 253, ~~Appendices Annexes A, B, C, D, and E, G, and H~~;
- xv. In NFPA 255, ~~Appendices Annexes~~ Annexes A, B, C, and D;
- xvi. In NFPA 288, Annexes A, B, and C;
- xvii. In NFPA 418, Appendix A;
- xviii. In NFPA 701, ~~Appendices Annexes~~ Annexes A, B, C, and D; and
- xix. In NFPA 801, ~~Appendices Annexes~~ Annexes A and ~~B C~~;
- b. The language in the included appendices and annexes shall be construed as mandatory rather than advisory; ~~and~~.
- ~~B.~~ A physical plant that is required to comply with the codes and standards in this Section is also required to comply with the Arizona Uniform Plumbing Code in 4 A.A.C. 48, Article 1. If a conflict exists between a code or standard incorporated by reference in subsection (A) and the Arizona Uniform Plumbing Code, the Arizona Uniform Plumbing Code governs.
- ~~C-B.~~ The Department shall not assess any penalty or fee specified in the physical plant health and safety codes and standards that are incorporated by reference in this Section.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R07-429]

PREAMBLE

1. Sections Affected

R12-4-501
R12-4-502
R12-4-503
R12-4-505
R12-4-506
R12-4-507
R12-4-509
R12-4-511
R12-4-514
R12-4-516
R12-4-517
R12-4-520

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend

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| | |
|-----------|-------------|
| R12-4-524 | Amend |
| R12-4-526 | New Section |
| R12-4-528 | New Section |

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 5-311

Implementing statutes: A.R.S. §§ 5-311(A), 5-321, 5-321.01, 5-324, 5-331, 5-332, 5-336, 5-322, 5-346, 5-349, 5-361, 5-391, 5-399, 5-399.01, 5-399.02, and 5-399.03.

3. The effective date of the rules:

February 2, 2008

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: Volume 13, A.A.R. 2098, June 15, 2007

Notice of Proposed Rulemaking: Volume 13, A.A.R. 2028, June 15, 2007

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Jennifer Stewart, Rules & Risk Manager

Address: Game and Fish Commission
5000 W. Carefree Hwy. – DORR
Phoenix, AZ 85086

Telephone: (623) 236-7389

Fax: (623) 236-7677

6. An explanation of the rules, including the agency's reasons for initiating the rules:

The Arizona Game and Fish Commission is amending its Article 5 rules, dealing with boating and water sports, to enact changes developed during a preceding five-year-rule review. After evaluating the scope and effectiveness of the revisions specified in the review, the Commission is also making additional changes to further implement its original proposal.

The Commission amends R12-4-501 to add a definition for the term “certificate of origin” as part of a suite of amendments intended to address concerns about the fraudulent registration of watercraft. A certificate of origin will be defined as a document establishing the initial chain of ownership of a watercraft, specifically a manufacturer’s certificate of origin (MCO), a manufacturer’s statement of origin (MSO), an importer’s certificate of origin (ISO), or builder’s certification (Form CG-1261), provided by the manufacturer of a new watercraft or its distributor, its franchised new watercraft dealer, and the original purchaser.

The Commission’s principle efforts in addressing fraudulent watercraft registration are focused in R12-4-502. First, the Commission is amending subsection (B) to compel the inspection of homemade watercraft. Under subsection (K), the Game and Fish Department reserves the right to require inspection of any watercraft to verify registration information provided by the applicant if the Department has reason to believe that the information is inaccurate or false. The agency is having a continuing problem with individuals registering a “homemade watercraft” with a “statement of fact” under subsection (F) for illegal purposes. Under A.R.S. § 5-321, these types of watercraft are not necessarily required for inspection, and criminals are using the registration procedures to fraudulently facilitate personal economic gains, which include tax evasion, insurance fraud, theft, and reductions in registration fees. Many times, remodeled watercraft are reregistered as homemade when in fact these watercraft are stolen, interiorly modified, and have the hull identification number (HIN) removed. By receiving a HIN through the registration process, criminals are able to pass the stolen watercraft as legal, and otherwise lawfully sell it to those who also assume that the watercraft is homemade.

To further combat attempted unlawful and fraudulent registration of watercraft, the Commission amends subsection (F)(6) to require that an individual that applies to register a watercraft under a statement of fact present the watercraft to the Department for inspection. It is sometimes difficult to clearly establish ownership of a watercraft registered under a statement of fact because no other form of documentation of the watercraft exists. This amendment would allow the Department to inspect the watercraft and establish a history of ownership through a HIN or other identifiers. The Commission is also adding a new subsection (7) to require that an individual that applies to register a new watercraft provide an original certificate of origin (CO). By providing an original CO, the Department is able to verify use and lawful possession of the watercraft, and establish a more definitive history of the watercraft if it is sold or registered by another lawful owner. Requiring an original CO also prevents fraudulent registration of watercraft. By requiring a CO, the Department can establish a record that can be used by the Coast Guard and other states to prevent someone from registering an identical watercraft in another state under the same CO. For the purposes of this Section, a new watercraft is any watercraft purchased from a new watercraft dealer or manufacturer within a year before it is registered. The Commission will also add a provision to allow for application for registration if the CO is not held by a lien holder. Currently, 34 states require a CO from the owner when registering a watercraft.

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Lastly under this rule, the Commission is amending R12-4-502 to ensure that an individual transfers registration of an abandoned watercraft through the appropriate process and prevent individuals from transferring registration of watercraft that are erroneously claimed to be abandoned when they may in fact be stolen. To achieve this objective, the Commission amends subsection (F)(6)(d) to clearly state that an individual who is applying to register a watercraft under a statement of fact shall certify that the watercraft was purchased, received as a gift, or received as a trade, and that the watercraft has not been registered, titled or otherwise documented in the past five years.

In the preceding five-year review, the Commission suggested amending R12-4-503 to divide telecommunication renewal of watercraft registration into telephone and online renewal to make each process more understandable. This change would result in a new subsection (D) that clearly prescribes requirements for online renewal of watercraft registration. In the original proposal, an applicant for online renewal was only required to provide a Department-approved password and the applicant's date of birth. The Commission is now modifying the new subsection (D) to fully include the existing requirements for online renewal. In addition to an applicant paying the registration fee required by A.R.S. § 5-321, an applicant shall also provide the assigned Arizona watercraft number (or AZ number) of the watercraft being renewed. This process is necessary because it identifies what watercraft is being renewed. The Commission is also amending the rule to require an online renewal applicant to provide either the date of birth, the Department-assigned authorization number (previously called the identification number), or the applicant's password.

The Commission further amends R12-4-503 to state that an applicant for watercraft renewal who applies by telephone shall provide the Department-assigned authorization number or the applicant's date of birth under subsection (C)(3). Many people do not feel comfortable giving their security password over the phone, and it is not necessary in lieu of either an authorization number or date of birth.

In reviewing R12-4-505, the Commission did not believe the rule adequately communicated the intent of the rule when prescribing requirements for affixation of a Department-issued HIN. This is problematic when the Department issues a number to a watercraft that already has a HIN that does not conform to Coast Guard standards. Because the Coast Guard has eminent authority over watercraft, it determines the format of HIN's. When the Department encounters a watercraft that has a non-conforming HIN, it will notify the Coast Guard and issue a new number. A problem occurs when those who are issued a replacement HIN do not place it on the watercraft, or place it somewhere on the watercraft where it fades and becomes unreadable. To resolve this concern, the Commission is amending subsection (E) of the rule to require an individual to permanently affix the HIN within 30 days of issuance. Either the applicant, the registered owner, or the Department shall affix the permanent HIN.

The Commission amends R12-4-506 to add a new subsection (7) under subsection (B) to invalidate a certificate of number and any decals if they are issued as a result of an internal processing error. When entering registration information, these errors can disqualify an individual from receiving an otherwise lawful registration or may result in the Department issuing a registration for an improper application. All such internal processing errors would be corrected using the proper registration process or other procedures.

The Commission amends R12-4-507 first to alphabetize the definitions listed in subsection (A) according to APA guidelines. The Commission next amends the subsection to make clear what constitutes "abandoned" in the definition of "abandoned watercraft." The current definition uses terms that are not definitive and could be openly interpreted. Some individuals have attempted to exploit the ambiguity of the definition in order to transfer registration and gain ownership of a watercraft that may not truly be abandoned. The Commission is amending the definition to state that a watercraft is abandoned if it has remained on private property without the consent of the private property owner or has remained unattended on a highway, public street, or other public property, or waterways for more than seven days.

The Commission is also amending subsection (C) of this rule to require additional information when reporting an abandoned watercraft. This information will help determine whether the watercraft was truly abandoned. The Commission amends subsection (7) to also require an individual to state whether the watercraft was abandoned on private or public property and, if private, whether the applicant is the legal owner of the property. The Department has occasionally received applications for transfer of ownership from individuals who have attempted to fraudulently transfer a watercraft that is left in another person's driveway or other type of property. The Commission is also adding a new subsection (10) to require an applicant for transfer of registration to state the length of time the watercraft was abandoned. This requirement will ensure that both the Department and the applicant adhere to the transfer of ownership process for abandoned watercraft. Finally, the Commission is adding a new subsection (11) that would require the applicant for transfer to provide a reason why the applicant believes the watercraft is abandoned. This item would reduce fraud by eliminating false claims and determine the appropriate process by which the watercraft can be registered.

The Commission is also amending R12-4-507 to make the rule more effective in achieving its objective. Under subsection (D), the Department has established a process to notify the owner of an abandoned watercraft when someone is attempting to transfer ownership of it. The agency notifies the legal owner via certified mail and gives the owner the opportunity to reclaim the watercraft or release interest in the watercraft by returning an enclosed pre-addressed postage-paid response card. The Department knows that the owner received the letter when the owner signs and returns the attached response card. The Department does not have a process in rule to resolve what happens when a legal owner does not indicate whether or not he or she is releasing ownership of the watercraft. The Commission is

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adding a new (D)(1)(d) to state that failure to either claim or release ownership of the watercraft within 180 days after the date the Department receives a signed certified card constitutes a waiver of interest in the watercraft by any individual having an interest in the watercraft and the watercraft shall be deemed abandoned for all purposes. This addition gives a watercraft owner a sizable opportunity to reclaim his or her property and prescribes a method by which an applicant for transfer may still obtain ownership.

In conjunction with the amendments proposed to R12-4-502, the Commission amends R12-4-509(G) to add a subsection requiring a watercraft agent to obtain and provide a certificate of origin to the purchaser. Under the amendments to R12-4-502, a watercraft owner must present that certificate of origin to register the watercraft.

The Commission is amending R12-4-511, dealing with personal flotation devices to reorder the subsections according to the Administrative Procedures Act standards. All references will be updated as well.

The Commission is also amending R12-4-514 to ensure that watercraft liveries comply with all safety equipment requirements prescribed in this Article and its authorizing statutes. Watercraft law enforcement officers statewide routinely encounter rental boats that do not have the appropriate equipment on board. Thus, the Commission will require written acknowledgement of compliance with A.R.S. § 5-371 by the livery operator. This provides written documentation on the rental receipt that the livery operator has provided to the renter all required safety equipment of proper size, quantity, and type as required by A.R.S. Title 5, Chapter 3, Articles 4 and 5, and A.A.C. Title 12, Chapter 4, Article 5. The Commission will also add that the receipt be signed by both the renter and the livery operator or the livery's agent so that both parties are aware of what equipment is on board and are knowingly in compliance.

The Commission is making significant changes to R12-4-516 to address the growing problem of watercraft that produce an excessive amount of noise. More and more people are using the state's lakes, and watercraft are being built bigger, faster, and most of all louder. To effectively regulate noise levels on state waters, the Commission is adding new language that would allow for additional sound tests, incorporating the Society of Automotive Engineers recommended practices SAEJ2005 and SAEJ1970, in addition to those sound tests currently used by the Department.

The Commission will make further changes to its original review proposal to clearly prescribe what these tests are and how they are to be conducted. The Department will clarify that SAEJ2005 tests are stationary sound level tests, which have their own protocol, and that an SAEJ1970 test is a shoreline sound level test. The Department is also adjusting the new subsection (D) drafted during the five-year review by creating a new subsection (E) that specifically speaks to operators of watercraft. The new subsection prescribes additional guidelines to the operator of a watercraft if the operator is directed to correct deficiencies by a law enforcement officer after failing a noise level test.

The Department's need to renovate lakes for use by the public is prompting the Commission to make amendments to R12-4-517 to make greater allowances for use of motorized watercraft on state lakes. To make available the necessary funds for the Department to meet its obligations for conserving aquatic habitat and resources and to serve public safety, the Commission is amending the rule to authorize the use of a single electric motor or a single gasoline engine that does not exceed 10 horsepower on certain lakes. By authorizing the use of engines that run on fossil fuels on specific lakes, the lakes will be eligible for improvement funds under the Wallop-Breaux tax, more commonly known as the "gas tax" issued through the State Lakes Improvement Fund. Because of the controversial nature of this proposal, the Commission is only allowing four lakes to be opened to 10 horsepower gasoline engines: Arivaca Lake, Black Canyon Lake, Lynx Lake, and Peña Blanca Lake.

The Commission has also received requests from Department personnel in Flagstaff and the division of the National Forest Service that presides over the Coconino National Forest to restrict use of Lower Lake Mary and Marshall Lake to single electric motors or single gasoline engines not exceeding 10 hp in subsection (B). During very wet winters, Lower Lake Mary spreads out, but remains shallow with limited visibility. The obscurity makes it difficult to identify the depth and the numerous hazards that become submerged at the bottom, such as well heads, fences, roads, and signs. Marshall Lake is a smaller lake that fosters waterfowl habitat. For the sake of conserving and retaining this habitat, restrictions will be put in place.

The Commission amends R12-4-520 to comply with Administrative Procedure Act guidelines for rulemaking language and style and to update incorporated material from the Code of Federal Regulations.

When the Commission reviewed R12-4-521, it attempted to address the problem of individuals who reside, live in, or leave watercraft, such as houseboats, on waters that have shared jurisdictions. On these waters, an individual is required to moor their watercraft either to a dock or a government-authorized or private buoy if they leave their watercraft unattended. However, some individuals tie their watercraft to a regulatory marker or aid, or simply drop anchor. The concern is aggravated by the fact that some of these waters do not prescribe time limits for prolonged residence or "camping" on the water. These "water squatters" generate additional problems while moored in the water, including abandonment of watercraft or houseboat, violating clean water regulations by discharging waste or leaking oil from watercraft, blocking access to public waters, thereby obstructing government agencies from carrying out their duties, and avoidance of paying mooring fees.

R12-4-521 already prescribes regulations for mooring or fastening a watercraft to a marker or aid not intended for mooring, but it is not intended to regulate "water squatting." Instead of expanding the rule, the Commission is adding a new Section to address unlawful mooring. The new rule R12-4-526 will state that an individual shall not moor, anchor, fasten to the shore or otherwise secure a watercraft for longer than 14 consecutive days on any public body of

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water, unless those waters are a special anchorage area as defined in A.R.S. § 5-301(12), or authorized private docks or moorages, or as authorized by the government agency or private interest that has jurisdiction over those waters.

Under R12-4-524, anyone who water skis must be observed by another individual who is physically capable and mentally competent to act as an observer. However, the Department has developed concerns over the use of underage youth as waterskiing observers, like very young children or toddlers. The Commission holds that an individual younger than 12 is not of sound enough temperament to act as observer and will amend the rule accordingly. Both California and Nevada require an observer to be 12 years of age or older.

Finally, the Commission is adding a new Section R12-4-528 to prescribe procedures for watercraft stops and checkpoints as well as to specify the responsibilities of the public when stopped or upon encountering these checkpoints. A key element of the agency's mission is to provide safe waterways for the use and enjoyment of the regulated community. Watercraft stop procedures allow an officer to ensure the presence of working safety equipment. Checkpoints, designated to inspect whether someone is operating a watercraft under the influence, serve a public interest in ensuring safety, particularly with the increasing use of the state's lakes.

- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department did not rely on any study in its evaluation of or justification for the rules.

- 8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 9. The summary of the economic, small business, and consumer impact:**

In making many of these amendments, the Commission's intent is to address fraudulent watercraft registration and watercraft safety, and ensure that ownership of watercraft is clearly established through a lawful process. In that sense, the majority of the benefit of this rulemaking is intended for the regulated community. The agency will also benefit from the proposed rulemaking, although some amendments may result in implementation costs. Overall, the proposed rulemaking will not affect businesses; however, amendments dealing with liveries and safety equipment may result in minor implementation costs. The proposed rulemaking will not affect other agencies, private or public employment, or the state general fund. Although proposed amendments to R12-4-517 that allow maximum 10 horsepower engines on the lakes listed will make the lakes eligible for state lake improvement funds, it will not increase or decrease the amount the agency may receive from the fund. The Commission has determined the benefits of the rulemaking outweigh any costs.

- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

There are no substantial changes between the proposed rules and the final rules as they appear in this notice. Minor clarifying, grammatical, or formatting changes were made at the request of G.R.R.C. staff.

- 11. A summary of the comments made regarding the rules and the agency response to them:**

The Department received five written comments regarding these rules. Nor oral comments were made at the public hearing.

Written Comment: June 6, 2007. Just wanted to suggest adding the ability to order a duplicate boat registration to the online services. I'd gladly pay an online fee to avoid driving to a specific location.

Agency Response: The Commission does not believe that the process for obtaining a duplicate watercraft registration renewal process lends itself to online completion but also holds that the process is sufficiently accessible. To obtain a duplicate a watercraft registration an individual may obtain the renewal notice from the Department's Internet web site but then must sign it under R12-4-503. An individual may mail the form to the Department for the cost of postage and the Department will compare the signature with the one on the initial registration to ensure they are identical.

Written Comment: June 17, 2007. All of these proposed rule changes seem to make sense and to be necessary. Thanks for the opportunity to comment.

Agency Response: The Commission appreciates your support.

Written Comment: July 6, 2007. The following are comments from the Mohave County Sheriff's Office regarding the proposed changes to the Game and Fish Commission's Boating and Water Sports rules.

a) R12-4-521. The Mohave County Sheriff's Office fully supports the proposed rule.

b) R12-4-516. The Mohave County Sheriff's Office fully supports the proposed rule.

c) R12-4-514. The Mohave County Sheriff's Office fully supports the proposed rule. In addition; however, the Sheriff's Office recommends further amendments to address the growing number of livery operators based on the water. These operations are infringing on the free use of public waters and are interfering with navigation contributing to public safety concerns. The Sheriff's Office proposes that the Department amend the rule to address the following:

- i) Environmental hazards created when liveries are allowed to fuel watercraft on the water or with no specific regulations.
- ii) Livery operations taking place in close proximity to dedicated no-entry areas and designated swimming areas.
- iii) Livery operations taking place on or adjacent to public beach areas.
- iv) The failure of livery operators to maintain “chase” boats for retrieval of inoperable rental boats and stranded customers.
- v) The lack of clear responsibility for removal of damaged or sunk rental watercraft.
- vi) The lack of a requirement for livery operators to fully cooperate with law enforcement during accident investigations.
- vii) The lack of requirements for livery operators to provide accurate contact information to law enforcement.

These are examples of changes Mohave County will be seeking to make to R12-4-514 in the future.

Agency Response: The Commission appreciates the support of the Mohave County Sheriff’s Office for its amendments to R12-4-521 and R12-4-516. The Commission also supports the amendments to R12-4-514 suggested by the Sheriff’s Office; however, it also believes that the scope of the suggested changes would significantly delay the effectiveness of the Department’s amendments already proposed. To effectively incorporate the suggested changes into rule, the Department would have to confer with other law enforcement agencies to work out the details of the rule and how it would be enforced. Also, if the Commission included the suggested changes at this stage in the process, the Department would have to file a Notice of Supplemental Proposed Rulemaking to notify the regulated community of substantial changes in the original proposal, particularly to obtain feedback from livery operators on how the additional amendments affected them and their business. As a result of providing additional notice, the Commission’s amendments to require additional safety measures for livery watercraft would be delayed as well. Rather than delay important rule changes to resolve the suggested amendments, the Commission instead opts to include the Mohave County Sheriff’s Office’s comments in the next five-year review report.

Written Comment: July 7, 2007. I have lived in Arizona for 15 years, and enjoyed the Arizona public waterways for over 30 years. In connection with my watercraft business, I have been conducting maritime sound level testing since 1986. The comment I offer is my best attempt to state the important parts of this subject in layman’s terms and offer the most effective “real world” solutions for sound level enforcement and reduction. Watercraft sound levels are a combination of the type of engine exhaust system, hull resonation, and hull-to-water-contact or “hull slapping.” All of these factors affect how sound is measured, in decibels. In order to get an accurate measure of sound, decibels must be accompanied by a specific distance; otherwise, the sound measure is flawed and unusable. Most SAE tests are used to test minute differences between engines, not significant differences between the average watercraft and the loudest crafts. The SAE tests, SAE J34, SAE J1970, and SAE J2005, used under the amendments to R12-4-516, were developed to help police sound levels in large marinas and small fishing lakes. However, they are not useful tests for Arizona’s lakes due to the factors that contribute to sound. Most modern personal watercraft and outboard motor watercraft use below-the-surface exhaust systems that are designed to significantly reduce noise. Inboard mono hull boats are so obtrusively loud that there is no intelligent reason to permit the operation of these watercraft or leniency toward an industry of makers that takes no meaningful action to stem the problem. The requirements for performing SAE tests and the need to maintain quality sound measurement equipment makes enforcement under R12-4-516 impractical. The best solution is to disallow the launching of any inboard craft fitted with an exhaust exit that is above the water surface. Such a rule does not require any measurement equipment, no testing procedures, and leaves no grey areas for judgment calls. Any sound reduction policy that does not include this requirement would amount to not much more than political posturing and little to no reduction of the biggest part of the problem at hand.

Agency Response: Although the Commission appreciates the commenter’s experience and recommendations, the Commission holds that the sound measurement tests prescribed in the rulemaking were developed by the Society for Automotive Engineers and are considered an industry standard for sound level measurement. It is important that any sound level decibel requirements the Commission prescribes be backed up with scientific testing and established testing protocol. Additionally, although there is no doubt that requiring all boats to have a below water level exhaust would reduce the noise levels on the state’s waterways, amending the rule accordingly would be a radical change that would require a significant investment from the boating industry and create a large expense for watercraft owners to retrofit their current watercraft. Therefore, the Commission disagrees with the comment.

Written Comment: July 8, 2007. The United States Department of Agriculture, National Forest Service has expressed opposition to the amendments to R12-4-517 to allow watercraft using a single electric motor or a single gasoline engine not exceeding 10 manufactured-horsepower on Peña Blanca Lake. The Nogales Ranger District manages the land around the 49-acre lake to provide a range of low-noise, low-impact visitor experiences, which will be appreciably diminished by allowing gas-powered watercraft, resulting in unnecessary user conflicts and increased visitor safety concerns. The lake’s cliff-bound shoreline effectively reflects sound throughout the area, which will adversely affect all activities around the lake. Wake and speed restrictions would also have to be implemented to prevent resource damage, because the cliffs limit wake dispersal. Besides negating the benefit of having a gas-powered engine, speed, wake restrictions would have to be implemented to ensure safety of float tube anglers.

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Agency Response: Although it recognizes user conflict may result from allowing watercraft powered by these motors on more lakes, the Commission does not believe that allowing watercraft with 10 hp gas-powered or electric engines will affect the use of the lake as significantly as suggested. In drawing this conclusion, the Commission sought input from its regional office in Tucson, which also manages Peña Blanca Lake. The Commission is prepared to resolve these conflicts in return for the necessary benefit of making the lake eligible for state lake improvement funds. Currently, Peña Blanca Lake needs improvement on infrastructure and on its impoundment levee, which the Commission will address with the available revenue. The Commission may also use the revenue to provide greater access to the lake's shallow edge, where heavy weed growth impedes the physically challenged. The Commission also does not believe a 10 hp watercraft will increase noise levels as greatly as speculated. The current industry standard for these watercraft has switched from a two-cycle engine to a quieter and cleaner four-stroke engine. Therefore, the Commission respectfully disagrees with the comment.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

| | |
|-----------|---|
| R12-4-516 | Society of Automotive Engineers (SAE) J1970 |
| | Society of Automotive Engineers (SAE) J2005 |
| R12-4-520 | 33 CFR 62 |

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 5. BOATING AND WATER SPORTS

Section

| | |
|------------|--|
| R12-4-501. | Boating and Water Sports Definitions |
| R12-4-502. | Application for Watercraft Registration |
| R12-4-503. | Renewal of Watercraft Registration |
| R12-4-505. | Hull Identification Numbers |
| R12-4-506. | Invalidation of Watercraft Registration |
| R12-4-507. | Transfer of Ownership of an Abandoned or Unreleased Watercraft |
| R12-4-509. | Watercraft Agents |
| R12-4-511. | Personal Flotation Devices |
| R12-4-514. | Liveries |
| R12-4-516. | Watercraft Sound Level Restriction |
| R12-4-517. | Watercraft Motor and Engine Restrictions |
| R12-4-520. | Arizona Uniform State Waterway Marking System |
| R12-4-524. | Water Skiing |
| R12-4-526. | Reserved <u>Unlawful Mooring</u> |
| R12-4-528. | Reserved <u>Watercraft Checkpoints</u> |

ARTICLE 5. BOATING AND WATER SPORTS

R12-4-501. Boating and Water Sports Definitions

In addition to the definitions provided in A.R.S. § 5-301, the following definitions apply to this Article unless the context requires otherwise:

1. "Aids to navigation" means buoys, beacons, or other fixed objects placed on, in, or near the water to mark obstructions to navigation or to direct navigation through channels or on a safe course.
2. "Bill of sale" means a written agreement transferring ownership of a watercraft and listing the following: the name of the buyer and seller; the manufacturer of the watercraft sold, if known; the hull identification number, unless exempted by R12-4-505; the purchase price and sales tax paid, if any; and the signature of the seller.
3. "Boats keep out" means that an operator or user of a watercraft, or a person being towed by a watercraft on waterskis, a surfboard, or similar device or equipment shall not enter.
4. "Certificate of origin" means a document establishing the initial chain of ownership of a watercraft: a manufacturer's

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certificate of origin (MCO), a manufacturer's statement of origin (MSO), an importer's certificate of origin (ICO), an importer's statement of origin (ISO), or builder's certification (Form CG-1261), provided by the manufacturer of a new watercraft or its distributor, its franchised new watercraft dealer, or the original purchaser.

- 4-5. "Controlled-use marker" means an anchored or fixed marker on the water, shore, or on a bridge that controls the operation of watercraft, water skis, surfboard, or similar devices or equipment.
- 5-6. "Homemade watercraft" means a watercraft that is not fabricated or manufactured for resale and to which a manufacturer has not attached a hull identification number. A watercraft assembled from a kit, or constructed from an unfinished manufactured hull, is a "homemade watercraft" if not already assigned a hull identification number by the manufacturer.
- 6-7. "Hull identification number" means a number assigned to a specific watercraft by the manufacturer or by a government jurisdiction as prescribed by the U.S. Coast Guard.
- 7-8. "Letter of gift" means a document transferring ownership of a watercraft and listing the following: the name of both the previous owner and the new owner; the name of the manufacturer of the watercraft if known; the hull identification number, unless exempted by R12-4-505; a statement that the watercraft is a gift; and the signature of the previous owner.
- 8-9. "Livery" means a business authorized to rent watercraft without an operator under A.R.S. § 5-371.
- 9-10. "No ski" means a person shall not be towed on water skis, an inflatable device, or similar equipment.
- 10-11. "No wake" means wakeless speed, as defined by A.R.S. § 5-301, and flat wake as referenced in A.R.S. § 5-350.
- 11-12. "Owner" in reference to a watercraft means a person who claims lawful possession of a watercraft by virtue of legal title or equitable interest, which entitles that person to possession.
- 12-13. "Personal flotation device" means a U.S. Coast Guard approved Type I, II, III, or V wearable, or Type IV throwable device for use on any watercraft, as prescribed by A.R.S. § 5-331(A), (C), and (D); A.R.S. § 5-350(A); and R12-4-511.
- 13-14. "Regatta" means an organized water event of limited duration that affects the use of waterways by the public and is conducted according to a prearranged schedule, for which a lawful jurisdiction has issued a permit, but the term does not include fishing tournaments.
- 14-15. "Registered owner" means the person or persons to whom a watercraft is currently registered by any jurisdiction.
- 15-16. "Regulatory marker" means a waterway marker placed on, in, or near the water to indicate the presence of a danger or a restricted or controlled-use area or to convey general information and directions.
- 16-17. "Sound level" means the noise level measured in decibels on the A-weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer's instructions.
- 17-18. "Staggered registration" means the system of renewing watercraft registrations that expire in accordance with the schedule contained in R12-4-504.
- 18-19. "State of principal use" means the state on whose waters the watercraft is used or to be used most during the calendar year.
- 19-20. "Use" in reference to a watercraft means any watercraft underway, moored, anchored, or beached on the waterways of the state.
- 20-21. "Watercraft" means a boat or other floating device of rigid or inflatable construction designed to carry people or cargo on the water that is propelled by machinery, oars, paddles, or wind action on a sail. Exceptions are sea-planes, makeshift contrivances constructed of innertubes or other floatable materials that are not propelled by machinery, personal flotation devices worn or held in hand, and other objects used as floating or swimming aids. Only motorized watercraft are subject to registration.
- 21-22. "Watercraft agent" means a person authorized by the Department to collect ~~appropriate~~ applicable fees for the registration and numbering of watercraft.
- 22-23. "Watercraft number" means the registration number issued by the Department under A.R.S. § 5-321.
- 23-24. "Watercraft registration" means the validated certificate of number and validating decals issued by the Department.

R12-4-502. Application for Watercraft Registration

- A. A person shall apply for watercraft registration under A.R.S. § 5-321 using a form provided by the Department. The applicant shall provide the following information for registration of all watercraft except homemade watercraft, which are addressed in subsection (B):
1. Type of watercraft and propulsion type;
 2. Overall length of watercraft;
 3. Manufacturer's name, if known;
 4. Year built or model year, if known;
 5. Hull identification number;
 6. Hull material;
 7. Fuel type;
 8. Category of use;
 9. Watercraft number previously issued for the watercraft, if any;

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10. State of principal use; and
11. Name, mailing address, and date of birth of each owner. To simplify the description of joint ownership when a watercraft is owned by more than one person, the applicant shall indicate ownership by use of one of the following methods:
 - a. Where ownership is joint tenancy with right of survivorship or community property with right of survivorship, the applicant shall use "and/or" between the names of the owners. To transfer registration of the watercraft, each party shall provide a signature if both are living. Upon legal proof of the death of either party, the living party may transfer registration of the watercraft upon the signature of the living party.
 - b. Where ownership is a tenancy in common the applicant shall use "and" between the names of the owners. To transfer registration of the watercraft, each party shall provide a signature. In the event of the death of any party, the interest of the deceased party shall be handled through appropriate legal proceedings.
 - c. Where the ownership is joint tenancy with an express intent that either of the owners has full authority to transfer registration, the applicant shall use "or" between the names of the owners. Each owner shall sign the application for registration. To transfer registration, either party's signature is sufficient for transfer.
- B.** The builder, owner or owners of a homemade watercraft shall present the watercraft for inspection at a Department office, and shall sign the application and have it notarized unless it is signed in the presence of a Department employee. The applicant shall provide the following information for registration of homemade watercraft, using the same ownership designations specified in subsection (A):
 1. Type of watercraft and propulsion type;
 2. Overall length of watercraft;
 3. Year built;
 4. Hull material;
 5. Fuel type;
 6. Category of use;
 7. Name, mailing address, and date of birth of each owner;
 8. State of principal use;
 9. Whether the watercraft was assembled from a kit or rebuilt from a factory or manufacturer's hull; and
 10. Hull identification number, if assigned.
- C.** In accordance with A.R.S. § 5-321, the applicant shall submit with the application for registration a receipt for use tax paid from the Arizona Department of Revenue unless at least one of the following applies:
 1. The applicant is exempt from use tax as provided in ~~45 A.A.C. 5~~ A.A.C. Title 15, Chapter 5,
 2. The applicant is transferring the watercraft from another jurisdiction to Arizona without changing ownership,
 3. Sales or use tax paid is shown on the bill of sale or receipt submitted by the applicant, or
 4. The applicant submits a notarized affidavit of exemption stating that the acquisition of the watercraft was for rental or resale purposes.
- D.** To obtain registration as a commercial watercraft under A.R.S. § 5-322(H), the owner shall provide evidence of payment of the ad valorem property tax under the provisions of Article 9, Section 16 of the Arizona Constitution; the tax privilege license number; and the business name, address, and telephone number.
- E.** To obtain watercraft dealer registration under A.R.S. § 5-322(G), the applicant shall be a business offering watercraft for sale, or a watercraft manufacturer registered by the U.S. Coast Guard. A person shall display dealer numbers for demonstration purposes only. "Demonstration" means to operate a watercraft on the water for the purpose of selling, trading, negotiating, or attempting to negotiate the sale or exchange of interest in new watercraft. Demonstration also includes operation by a manufacturer for purposes of testing a watercraft. Demonstration does not include operation of a watercraft for personal purposes by a dealer or manufacturer, employee of a dealer or manufacturer, family member of a dealer or manufacturer, or an associate of a dealer or manufacturer. The Department shall issue the number of certificates and decals specified on the application, or deny issuance within 30 calendar days of receiving the application. The applicant shall provide the following information on a form available from the Department:
 1. All business names used for the sale or manufacture of watercraft in Arizona, and the mailing address and telephone number for each business to be issued watercraft dealer registrations;
 2. Tax privilege license number;
 3. U.S. Coast Guard manufacturer identification code, if applicable;
 4. Total number of certificates of number and decals to be issued; and
 5. Name, address, signature, and phone number of the owner or manager of the principal business.
- F.** In addition to submitting the application form and any other information required by this Section, the applicant for watercraft registration shall submit one of the following additional forms of documentation:
 1. An original title if the watercraft is titled in another state, and a release of interest if the watercraft is being transferred to an individual other than the original listed owner;
 2. An original registration if the watercraft is from a registration state, and a release of interest if the watercraft is being transferred to an individual other than the original listed owner;

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3. A bill of sale as defined in R12-4-501 if the watercraft has never been registered or titled in any state;
 4. A letter of gift as defined in R12-4-501 if the watercraft was received as a gift and was never registered or titled in another state;
 5. A court order or other legal documentation establishing lawful transfer of ownership; or
 6. A statement of fact form available from any Department office if none of the documentation identified in subsections (F)(1) through (F)(5) exists, either in the possession of the watercraft owner or in the records of any jurisdiction responsible for registering or titling watercraft. An applicant that applies for watercraft registration under a statement of fact shall present the watercraft for inspection at a Department office. The owner or owners of the watercraft shall sign the statement of fact form and shall have it notarized unless ~~it~~ the form is signed in the presence of an authorized Department employee. The owner or owners of the watercraft shall provide the hull identification number of the watercraft on the statement of fact form and shall certify one of the following:
 - a. The watercraft was manufactured prior to 1972, is 12 feet in length or less, and is not propelled by an inboard engine;
 - b. The watercraft is owned by the applicant, and it has never been registered or titled;
 - c. The watercraft was owned in a state that required registration, but the watercraft was never registered or titled; or
 - d. The watercraft was purchased, received as a gift, or received as a trade, and that the watercraft has not been registered, titled, or otherwise documented in the past five years; or
 7. An original certificate of origin if the watercraft was purchased as new, the applicant is applying for watercraft registration within a year of purchasing the watercraft, and the certificate of origin is not held by a lien holder.
- G.** The Department shall register a watercraft, if the watercraft's original title or registration is lost, upon receipt of one of the following:
1. A letter or printout from any jurisdiction responsible for registering or titling watercraft that verifies the owner of record for that specific watercraft,
 2. A statement of fact by the applicant as prescribed in subsection (F)(6) if the watercraft has not been registered, titled, or otherwise documented in the past five years, or
 3. An affidavit of publication demonstrating the applicant's compliance with R12-4-507.
- H.** If the original title is held by a lien holder, the applicant for a watercraft registration shall submit a form furnished by the Department and available from any Department office along with a copy of the title. The applicant shall comply with the following requirements when submitting the form:
1. The applicant shall provide the following information on the form:
 - a. The applicant's name,
 - b. The applicant's address,
 - c. The watercraft make, and
 - d. The watercraft hull identification number (HIN).
 2. The applicant shall ensure that the lien holder provides the following information on the form:
 - a. The lien holder's name,
 - b. The lien holder's address,
 - c. The name of the person completing the form for the lien holder,
 - d. The title of the person completing the form for the lien holder, and
 - e. The notarized signature of the person completing the form for the lien holder.
- I.** A person shall not apply for or obtain a watercraft registration by making a false statement or providing false information on any application, statement of fact, or written instrument submitted to the Department. The Department shall provide notice that a watercraft registration is invalid if the registration is obtained by an applicant who makes a false statement or provides false information on any application, statement of fact, or written instrument submitted to the Department, and as prescribed in R12-4-506.
- J.** The Department shall issue a watercraft registration within 30 calendar days of receiving a valid application and documentation required by this Section, whether from the applicant or from a watercraft agent under R12-4-509. An application is not considered valid if the Department receives legal documentation that legal action may affect ownership of the watercraft.
- K.** All watercraft registrations and supporting documentation are subject to verification by the Department and to the requirements of R12-4-505. The Department shall require a watercraft to be presented for inspection to verify the information provided by an applicant if the Department has reason to believe that the information provided by the applicant is inaccurate or false.

R12-4-503. Renewal of Watercraft Registration

- A.** The Department shall mail renewal notices to the address of the watercraft owner, as shown on the certificate of number, six weeks before the last day of the month of expiration established under R12-4-504. The owner of a watercraft shall ensure that the watercraft's registration is renewed regardless of whether the renewal notice is received.
- B.** To renew a watercraft's registration in person or by mail, an applicant shall submit the registration fee required by A.R.S. § 5-321 and the renewal notice provided by the Department. In the absence of the renewal notice, the registered owner

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shall present one of the following:

1. A current or prior certificate of number;
2. A valid driver's license;
3. A valid Arizona Motor Vehicle Division identification card; or
4. A valid passport.

C. To renew a watercraft's registration by ~~telecommunications~~ telephone, an applicant shall pay the registration fee required by A.R.S. § 5-321 and shall provide ~~either of~~ the following to the Department or its agent:

1. The name ~~and address~~ of the watercraft's registered owner as it appears on the renewal notice, ~~and~~
2. The assigned Arizona watercraft number (AZ number) of the watercraft being renewed, ~~or and~~
3. The Department-assigned ~~identification~~ authorization number or ~~password~~ the applicant's date of birth.

D. To renew a watercraft's registration via the Internet, an applicant shall pay the registration fee required by A.R.S. § 5-321 and shall provide the assigned Arizona watercraft number (AZ number) of the watercraft being renewed and one of the following to the Department or its agent:

1. The Department-assigned authorization number.
2. The applicant's date of birth, or
3. The applicant's password.

~~D-E.~~ The Department or its agent shall renew a watercraft's registration within 30 calendar days of receiving a valid application for renewal. The Department shall mail the renewal to the address of record unless the applicant renews the watercraft's registration in person, or unless there is a notarized request from the registered owner to mail it to another address.

R12-4-505. Hull Identification Numbers

A. The Department shall not register a watercraft without a hull identification number.

B. The Department shall assign a hull identification number to a watercraft with a missing hull identification number only if the Department determines that:

1. A hull identification number has not been illegally removed or altered, unless the application is made by a governmental agency and is accompanied by an order of forfeiture or order of seizure or other civil process; or
2. The missing hull identification number was caused by error of the manufacturer or a government jurisdiction or failure of a previous owner of a watercraft to comply with this rule, or because the watercraft is a "homemade watercraft" as defined in R12-4-501.

C. The Department shall assign or deny assignment of a hull identification number within 30 days of receipt of a valid application, as described in R12-4-502.

D. The Department shall accept a bill of sale presented with a missing or improper hull identification number for registration purposes only if:

1. It matches the improper hull identification number or there is no hull identification number on the watercraft; or
2. A hull identification number is issued by the Department under subsection (B).

E. ~~The~~ Within 30 days of issuance, the applicant, the registered owner, or the Department shall permanently affix the hull identification number as follows:

1. On watercraft with transoms, affix the hull identification number to the right or starboard side of the transom within two inches of the top of the transom or hull/deck joint, whichever is lower.
2. On watercraft without a transom, affix the hull identification number to the starboard outboard side of the hull, back or aft within one foot of the stern and within two inches of the top of the hull, gunwale, or hull/deck joint, whichever is lowest.
3. On a catamaran or pontoon boat, affix the hull identification number on the aft crossbeam within one foot of the starboard hull attachment.
4. If the hull identification number would not be visible because of rails, fittings, or other accessories, affix it as close as possible to the applicable location prescribed in subsection (E)(1).
5. Affix a duplicate of the visibly affixed hull identification number in an unexposed location on a permanent part of the hull.
6. Burn, carve, stamp, emboss, mold, bond, or otherwise permanently affix each hull identification number to a non-removable part of the watercraft so that alteration, removal, or replacement will be obvious.
7. Ensure that the characters of each hull identification number affixed to the watercraft are no less than 1/4 inch in height.

R12-4-506. Invalidation of Watercraft Registration

A. Any watercraft registration obtained by fraud or misrepresentation is invalid from the date of issuance.

B. A certificate of number and any decals issued are invalid if any of the following occurs:

1. Any check, money order, or other currency certificate presented to the Department for payment of watercraft registration or renewal is found to be non-negotiable;
2. Any person whose name appears on the certificate of number loses ownership of the watercraft by legal process;
3. Arizona is no longer the state of principal use;

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4. The watercraft is documented by the U.S. Coast Guard;
 5. An applicant provides incomplete or incorrect information to the Department and fails to provide the correct information within 30 days after a request by the Department; ~~or~~
 6. The Department revokes the certificate of number, numbers, and decals as provided in A.R.S. § 5-391(H); or
 7. The Department erroneously issues a certificate of number or any decals.
- C. A person shall return the certificate of number and decals that are invalid under subsections (A) or (B) to the Department within 15 calendar days of receiving written notification from the Department that the certificate of number and decals are invalid.
- D. The Department shall not validate or renew an invalid watercraft registration until the reason for invalidity has been corrected or no longer exists.

R12-4-507. Transfer of Ownership of an Abandoned or Unreleased Watercraft

- A. For the purpose of this Section the following definitions apply:
1. ~~“Abandoned watercraft” means a watercraft that is deserted on a highway, a public street, or on public or private property or waters has remained on private property without the consent of the private property owner or has remained unattended on a highway, public street, or other public property, or waterway for more than seven days. A watercraft left under a written repair or storage order is not an abandoned watercraft.~~
 2. ~~“Unreleased watercraft” means a watercraft for which there is no release of interest from the registered owner. “Release of interest” means a statement giving up, surrendering, or abandoning unconditionally any claim or right of ownership or use in a watercraft.~~
 3. ~~“Release of interest” means a statement giving up, surrendering, or abandoning unconditionally any claim or right of ownership or use in a watercraft. “Unreleased watercraft” means a watercraft for which there is no release of interest from the registered owner.~~
- B. Unless an abandoned or unreleased watercraft is reported stolen the last registered owner is presumed to be responsible for the watercraft.
- C. An applicant seeking transfer of ownership of an abandoned or unreleased watercraft shall submit the following information, if available, on a form obtained from the Department:
1. Hull identification number, unless exempted by R12-4-505;
 2. Registration number;
 3. Decal number;
 4. State of registration;
 5. Year of registration;
 6. Name, address, and daytime telephone number of the person who found the watercraft;
 7. If the watercraft is abandoned, the description or address of the location where the watercraft was found, whether the watercraft was abandoned on private or public property, and if private, whether or not the applicant is the legal owner of the property;
 8. Condition of the watercraft: whether wrecked, stripped, or intact; ~~and~~
 9. State in which the watercraft will be used;
 10. Length of time the watercraft was abandoned; and
 11. Reason why the applicant believes the watercraft is abandoned.
- D. The Department shall attempt to determine the name and address of the registered owner and, if successful, shall send written notice of the attempt to register the watercraft by the applicant to the registered owner by certified mail, return receipt requested.
1. After 30 calendar days from the date the Department mails the notice, if service is successful, or upon receipt of a response from the registered owner, the Department shall advise the applicant in writing according to the following:
 - a. If the registered owner provides a written release of interest in the watercraft, the Department shall provide the applicant with the release and the applicant may then register the watercraft under R12-4-502.
 - b. If the registered owner provides written notice to the Department refusing to release an interest in the watercraft, the Department shall advise the applicant of the refusal, and the Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with R12-4-502.
 - c. If service is successful and the registered owner does not respond to the notice in writing within 30 days from the date of mailing, when service was successful, the Department shall advise the applicant of the failure to respond, and the Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with R12-4-502;
 - d. If service is successful and the registered owner does not provide written notice to claim or release interest in the watercraft within 180 days after the date the Department receives the notice, this failure to act shall constitute a waiver of interest in the watercraft by any individual having an interest in the watercraft, and the watercraft shall be deemed abandoned for all purposes.
 2. If the Department cannot determine who the registered owner of the watercraft is, or if the written notice is returned unclaimed or refused, the Department shall advise the applicant in writing within 15 days of the notice being returned

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that the attempt to identify or contact the registered owner was unsuccessful.

- E. If the Department is unsuccessful in its attempt to identify or serve the registered owner under subsection (D)(2), the Department shall publish a notice of intent of the Director of the Department to transfer ownership of the abandoned or unreleased watercraft in a newspaper or other publication of general circulation in this state within 45 days of the Department's notification to the applicant as provided in subsection (D)(2). The published notice shall include a statement of the intent of the Director to transfer ownership of the watercraft as provided by R12-4-502 10 days after the notice is published, unless the Department receives notice from the registered owner refusing to release interest in the watercraft. The Department shall make available to the public upon request a description of the abandoned or unreleased watercraft subject to transfer of ownership.

R12-4-509. Watercraft Agents

- A. The Department has the authority to authorize an agent to act for the Department for the purpose of issuing temporary certificates of number valid for 30 days for new watercraft only if:
1. The applicant's previous authority to act as a watercraft agent under A.R.S. § ~~5-321(E)~~ 5-321(H) has not been cancelled by the Department within the preceding 24 months, and
 2. The applicant is a business located and operating within this state that sells watercraft for an identified manufacturer.
- B. An applicant for watercraft agent authorization shall apply on forms provided by the Department. The Department shall issue authorization or deny the application within 30 calendar days of receiving the application. The applicant shall provide the following information on the application:
1. The principal business or corporation name, address, and telephone number;
 2. If not a corporation, the full name, address, and telephone number of all owners or partners;
 3. The name, address, and telephone number of the owner or manager that is responsible for compliance with this Section;
 4. Whether or not the applicant has previously issued temporary certificates of number under A.R.S. § ~~5-321(E)~~ 5-321(H);
 5. The storefront name, street address, type of business, name of the manager, telephone number, and business hours of the location from which new watercraft are to be sold and temporary certificates of number issued;
 6. The manufacturers of the watercraft to be distributed; and
 7. The signature of the person named under subsection (B)(3).
- C. Authorization to act as a watercraft agent is specific to the business location designated on the application and approved by the Department. The only exception is if the agent is participating in a scheduled, advertised boat show for the purpose of selling watercraft.
- D. The Department shall assign an agent number to a watercraft agent upon approval of the application, and shall supply the agent with forms and a schedule of fees to be collected for compliance with A.R.S. § 5-321.
- E. A watercraft agent shall not destroy prenumbered temporary certificate of number applications provided by the Department but shall mark an application "void" if necessary and return the application to the Department with the monthly report required in subsection (I).
- F. An agent shall verify that watercraft agent supplies were received within seven days of receipt. The Department shall provide new supplies within 30 calendar days after receipt of an agent's request form.
- G. A watercraft agent shall comply with the following if the agent is issuing a temporary certificate of number to the purchaser of a new watercraft:
1. The watercraft agent shall obtain an application if the watercraft is purchased from the agent, or the applicant's bill of sale that shows the following:
 - a. The watercraft is new as distinguished from used,
 - b. The names and addresses of the buyer and seller,
 - c. The date of purchase,
 - d. The amount of sales tax paid,
 - e. The purchase price,
 - f. The manufacturer's name,
 - g. The length of the watercraft,
 - h. The year of manufacture, and
 - i. The hull identification number.
 2. The agent shall obtain a certificate of origin from the manufacturer and provide it to the purchaser of the new watercraft.
 - ~~2-3.~~ The agent shall identify to the applicant the state registration fee and the ~~appropriate~~ applicable watercraft license tax separately from any other costs; and
 - ~~3-4.~~ The agent shall, within 72 hours after issuing a temporary certificate of number, deliver to the Department's Phoenix office or deposit in the U.S. mail the legible original application, a legible original or copy of the bill of sale, and a check or money order for the state's fees.
- H. The Department shall accept applications only on prenumbered temporary certificate of number application forms pro-

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vided to the agent by the Department, as prescribed in R12-4-502.

- I. By the 10th day of each month, a watercraft agent shall submit a report of activity for the previous month to the Department on a form provided by the Department. The watercraft agent shall submit the report whether or not any temporary certificates of number are issued during the reporting period. The report shall include:
 - 1. The name and address of the watercraft agent, and the agent number assigned by the Department;
 - 2. For each temporary certificate of number issued, the application number, the name of the purchaser, the hull identification number, and the date of issuance; and
 - 3. A list of any voided or missing application numbers, with explanation.
- J. The Department may cancel authorization to be a watercraft agent and demand return of or collect all supplies issued to the agent based on consideration of the following:
 - 1. Failure to comply with this Section;
 - 2. Issuing more than one check with insufficient funds to the Department within a calendar year;
 - 3. Predating, postdating, altering, or providing or knowingly allowing false information to be provided on or with an application for a temporary certificate of number;
 - 4. Knowingly issuing a temporary certificate of number for a used watercraft; or
 - 5. Falsifying the application for authorization as a watercraft agent, or falsifying the monthly report required by subsection ~~(F)~~ (I).
- K. Denial of an application to become a watercraft agent, or cancellation of watercraft agent status by the Department, may be appealed to the Commission as prescribed in A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Appeals Procedures.

R12-4-511. Personal Flotation Devices

- A. For the purpose of this Section, “wear” means that the personal flotation device is being worn according to the manufacturer’s design or recommended use; that all closures of the personal flotation device are fastened, snapped, tied, zipped, or secured according to the manufacturer’s design or recommended use; and that the personal flotation device is adjusted for a snug fit.
- ~~A.B.~~ The operator of a canoe, kayak, or other watercraft shall ensure that the canoe, kayak, or other watercraft is equipped with at least one appropriately-sized, U.S. Coast Guard-approved, wearable personal flotation device that is in good and serviceable condition for each person on board the canoe, kayak, or other watercraft. The operator of a canoe, kayak, or other watercraft shall also ensure that the wearable personal flotation devices on board the canoe, kayak, or other watercraft are readily accessible and available for immediate use. The following wearable personal flotation devices are approved by the U.S. Coast Guard:
 - 1. Type I Personal Flotation Device: off-shore life jacket,
 - 2. Type II Personal Flotation Device: near-shore buoyancy vest,
 - 3. Type III Personal Flotation Device: flotation aid, and
 - 4. Type V Special Use Device.
- ~~B.C.~~ In addition to the personal flotation devices prescribed in subsection ~~(A)~~ (B), the operator of a watercraft that is 16 feet or more in length, except a canoe or kayak, shall ensure that the watercraft is also equipped with a U.S. Coast Guard-approved buoyant cushion, ring buoy, or horseshoe buoy (Type IV Personal Flotation Device).
- ~~C.D.~~ Persons on board a watercraft or personal watercraft shall wear an appropriately-sized, U.S. Coast Guard-approved personal flotation device as prescribed in A.R.S. § 5-331(C) and A.R.S. § 5-350(A).
- ~~D.~~ For the purpose of this Section, “wear” means that the personal flotation device is being worn according to the manufacturer’s design or recommended use; that all closures of the personal flotation device are fastened, snapped, tied, zipped, or secured according to the manufacturer’s design or recommended use; and that the personal flotation device is adjusted for a snug fit.
- E. Subsections ~~(A)~~, ~~(B)~~, and ~~(C)~~, and (D) do not apply to the operation of a racing shell or rowing skull during competitive racing or supervised training, if the racing shell or rowing skull is manually propelled, recognized by a national or international association for use in competitive racing, and designed to carry and does carry only equipment used solely for competitive racing.

R12-4-514. Liveries

~~Pursuant to~~ Under A.R.S. § 5-371, a watercraft owned by a boat livery ~~which~~ that requires registration and does not have the certificate of number on board shall be identified while in use by means of a receipt provided by the livery to, and to be kept in the possession of, the person operating the rented watercraft. The receipt shall contain the following information:

- 1. No change
- 2. No change
- 3. The beginning date and time of the rental period; and
- 4. Written acknowledgement on the receipt of compliance with A.R.S. § 5-371 signed by both the livery operator or the livery’s agent and the renter.

R12-4-516. Watercraft Sound Level Restriction

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- A. ~~It shall be unlawful for any~~ A person shall not ~~to~~ operate a watercraft upon the waters of this state ~~under any condition or in any manner that if the watercraft emits a sound noise level in excess of 86 decibels on the "A" weighted scale when measured from a distance of 50 feet or more from the watercraft that exceeds any of the following.~~
1. A noise level of 86 dB(A), measured at a distance of 50 feet or more from the watercraft on the "A" weighted scale of a sound level instrument that conforms to recognized industry standards and is maintained according to the manufacturer's instructions.
 2. For engines manufactured:
 - a. Before January 1, 1993, a noise level of 90 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004, which is incorporated by this reference, not including any later editions or amendments; and
 - b. On or after January 1, 1993, a noise level of 88 dB(A) when subjected to the Society of Automotive Engineers Recommended Practice stationary sound level test SAEJ2005, revised July 2004, which is incorporated by this reference, not including any later editions or amendments; or
 3. A noise level of 75 dB(A) measured as specified in the Society of Automotive Engineers Recommended Practice shoreline sound test SAEJ1970, revised September 2003, which is incorporated by this reference, not including any later editions or amendments.
- B. Copies of the materials incorporated by reference in subsection (A) are available from any Department office.
- C. A measurement of noise level that is in compliance with this Section does not preclude the conducting of a test or multiple tests of noise levels.
- D. A peace officer authorized to enforce the provisions of this Section who has reason to believe that a watercraft is being operated in violation of the noise levels established in this Section may direct the operator of the watercraft to submit the watercraft to an onsite test to measure noise level.
- E. An operator of a watercraft who receives a request from a peace officer to test the noise level of the watercraft under subsection (D) shall allow the watercraft to be tested. If, based on a measurement or test to determine the noise level of a watercraft administered under this Section, the noise level of the watercraft exceeds one or more of the decibel level standards in subsection (A), the operator of the watercraft shall take immediate measures to correct the violation as prescribed by A.R.S. § 5-391(C).
- ~~B-E.~~ This Section shall not apply to watercraft operated under permits issued in accordance ~~to~~ with A.R.S. § 5-336(C).

R12-4-517. Watercraft Motor and Engine Restrictions

- A. A person operating a motorized watercraft on the following waters shall use an electric motor only:

Ackre Lake
~~Arivaca Lake~~
Bear Canyon Lake
~~Black Canyon Lake~~
Bunch Reservoir
Carnero Lake
Chaparral Park Lake
Cluff Ponds
Coconino Reservoir
Coors Lake
~~Dankworth~~ Dankworth Pond
Dogtown Reservoir
Fortuna Lake
Goldwater Lake
Granite Basin Lake
Horsethief Basin Lake
Hulsey Lake
J.D. Dam Lake
Knoll Lake
Lee Valley Lake
~~Lynx Lake~~
McKellips Park Lake
~~Pena Blanca Lake~~

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Pratt Lake
Quigley Lake
Redondo Lake
Riggs Flat Lake
Roper Lake
~~Rucker Canyon Lake~~
Santa Fe Lake
Scott's Reservoir
Sierra Blanca Lake
Soldier Lake (in Coconino County)
Stehr Lake
Stoneman Lake
Tunnel Reservoir
Whitehorse Lake
Willow Valley Lake
Woodland Reservoir
Woods Canyon Lake

- B.** A person operating a motorized watercraft on the following waters shall use only a single electric motor or a single gasoline engine not exceeding 10 manufacturer-rated horsepower:

Arivaca Lake
Ashurst Lake
Becker Lake
Big Lake
Black Canyon Lake
Blue Ridge Reservoir
Cataract Lake
Chevelon Canyon Lake
Cholla Lake Hot Pond
Concho Lake
Crescent Lake
Fool Hollow Lake
Kaibab Lake
Kinnikinick Lake
Little Mormon Lake
Lower Lake Mary
Luna Lake
Lynx Lake
Marshall Lake
Mexican Hay Lake
Nelson Reservoir
Parker Canyon Lake
Peña Blanca Lake
Rainbow Lake
River Reservoir
Show Low Lake
Whipple Lake
White Mountain Lake (in Apache County)

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Willow Springs Lake

- C. A person shall not operate a watercraft on Frye Mesa Reservoir, Rose Canyon Lake, or Snow Flat Lake.
- D. This rule does not apply to watercraft of governmental agencies or to Department-approved emergency standby watercraft operated by lake concessionaires if operating to address public safety or public welfare.

R12-4-520. Arizona Uniform State Waterway Marking System

The Arizona ~~Uniform State Waterway Marking System~~ uniform state waterway marking system is that prescribed in 33 CFR 62, revised July 1, ~~1998~~ 2004, not including any later editions or amendments, which is incorporated by reference in this Section. A copy ~~is on file with the Secretary of State and~~ is available from any Department office, or it may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

R12-4-524. Water Skiing

An operator of a watercraft shall ensure that the observer of a water skier is physically capable and mentally competent to act as an observer and at least 12 years of age.

R12-4-526. ~~Reserved~~ Unlawful Mooring

An individual shall not moor, anchor, fasten to the shore, or otherwise secure a watercraft for longer than 14 consecutive days in any public body of water unless:

1. The individual moves the watercraft at least 25 nautical miles from its previous location.
2. The waters are a special anchorage area as defined by A.R.S. § 5-301(12).
3. Authorized for private dock or moorage, or
4. Authorized by the government agency or private interest that has jurisdiction over the waters.

R12-4-528. ~~Reserved~~ Watercraft Checkpoints

- A. A law enforcement agency may establish a watercraft checkpoint to ensure public safety on state waterways, to screen for unsafe or impaired watercraft operators, or to gather demographic, statistical, and compliance information related to watercraft activities.
- B. An individual may be required to perform the following during a watercraft stop or at a watercraft checkpoint:
 1. Stop or halt as directed when being hailed by a peace officer or entering the established checkpoint boundary under A.R.S. § 5-391, and
 2. Provide evidence of required safety equipment and registration documentation under A.R.S. Title 5, Chapter 3, Boating and Water Sports.
- C. This Section does not limit any state peace officer's authority to conduct routine watercraft patrol efforts under A.R.S. Title 5, Chapter 3, Boating and Water Sports.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

[R07-432]

PREAMBLE

1. Sections Affected

R12-5-2301
R12-5-2302
R12-5-2303
R12-5-2304
R12-5-2305
R12-5-2306
R12-5-2307
R12-5-2308
R12-5-2309
R12-5-2310
R12-5-2311
R12-5-2312
R12-5-2313
R12-5-2314
R12-5-2315

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend
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Amend
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Amend
Amend
Amend
Amend
Amend

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2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 37-213(E)
Implementing statute: A.R.S. §§ 27-234(J), 27-567(F), 37-132(A)(7), 37-214, 37-215, 37-236(C), 37-285(F), 37-312(M), 37-321.01(E), 37-331.01(C), 37-334(E), and 37-335(F) and (I)
3. **The effective date for the rules:**
February 2, 2008
4. **List of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening: 13 A.A.R. 262, February 2, 2007
Notice of Proposed Rulemaking: 13 A.A.R. 2678, August 3, 2007
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Lorraine Duran
Address: State Land Department
1616 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 542-2603
Fax: (602) 542-2508
E-mail: lduran@land.az.gov
6. **An explanation of the rules, including the agency's reasons for initiating the rulemaking:**
In response to a five-year-review report approved by the Council on May 3, 2005, the Board is amending its rules to make them more clear, concise, and understandable and consistent with Board procedure.
7. **A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
8. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
9. **The summary of the economic, small business, and consumer impact:**
The rulemaking, which simply makes existing rules more clear, concise, and understandable, will have minimal economic impact.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
In addition to minor, non-substantive changes made between the proposed and final rules, the Board increased from seven to 10 days the period for which weekends and holidays are excluded in calculating time under the rules. This change is not substantial. It simply makes the rules consistent with Rule 6(a) of the Arizona Rules of Civil Procedure.
11. **A summary of the comments made regarding the rules and the agency response to them:**
No comments were made regarding the proposed rules.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None
13. **Incorporations by reference and their location in the rule:**
None
14. **Were these rules previously made as emergency rules?**
No
15. **The full text of the rules follows:**

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

Notices of Final Rulemaking

ARTICLE 23. BOARD OF APPEALS

Section

- R12-5-2301. Definitions
- R12-5-2302. ~~Contents of a~~ Notice of Appeal
- R12-5-2303. Notice of Hearing
- R12-5-2304. Prehearing Disclosure
- R12-5-2305. Continuances
- R12-5-2306. Computation of Time; Additional Time After Service by Mail
- R12-5-2307. Service of Documents Other than Subpoenas
- R12-5-2308. Subpoenas
- R12-5-2309. Motions
- R12-5-2310. Hearing
- R12-5-2311. Evidence
- R12-5-2312. Objection to Decision by Chairperson
- R12-5-2313. Ex Parte Communications
- R12-5-2314. Decision of the Board
- R12-5-2315. Rehearing or Review of ~~Decisions~~ Decision

ARTICLE 23. BOARD OF APPEALS

R12-5-2301. Definitions

Unless the context requires otherwise, ~~the words defined below shall have the following meaning when found in these rules in this Article:~~

1. "Appellant" means the person ~~who~~ that files a notice of appeal with the Clerk ~~pursuant to~~ under A.R.S. § 37-215.
2. "Board" means the Land Department Board of Appeals appointed by the Governor ~~pursuant to~~ under A.R.S. § 37-213(A).
3. "Chairperson" means the Chairperson or, in the Chairperson's absence or by designation, the Vice-chairperson of the ~~Land Department Board of Appeals.~~
4. "Clerk" means the person designated ~~as Clerk of the Land Department by the~~ Board of Appeals to handle administrative matters for the Board.
5. "Commissioner" means the State Land Commissioner of the state of Arizona appointed under A.R.S. § 37-131, or the ~~Land Commissioner's duly authorized deputy designee.~~
6. "Department" means the State Land Department of the state of Arizona.
7. ~~"Ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given.~~
7. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
8. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.
- 8-9. ~~"Person" shall include~~ means an individual, limited liability company, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary representative, or any group acting as a unit, and includes any department, agency, or instrumentality of the state or of any a governmental political subdivision thereof.
9. ~~"Person outside the Board" means any person other than a Board member, an employee, or consultant of the Board, or an attorney representing the Board in its adjudicatory role.~~

R12-5-2302. ~~Contents of a~~ Notice of Appeal

- A. A person that files a notice of appeal filed pursuant to under A.R.S. § 37-215 shall ~~contain~~ ensure that the notice is written and contains a clear and concise statement of the grounds for appeal and the specific relief requested.
- B. If a notice of appeal regards a final decision of the Commissioner relating to classification or appraisal of lands or improvements, the person filing the notice of appeal shall file it with the Commissioner under this Article.
- C. If a notice of appeal regards a final decision of the Commissioner not relating to classification or appraisal of lands or improvements, the person filing the notice of appeal shall file it with the Department under A.R.S. Title 41, Chapter 6, Article 10.

R12-5-2303. Notice of Hearing

- A. Setting a hearing date. Within 10 days ~~from the date of receiving the~~ after receipt of a notice of appeal under A.R.S. § 37-215 ~~and R12-5-2302(B)~~, the Clerk shall set a date for the hearing ~~in compliance with A.R.S. § 37-215.~~
- B. Service of a notice of hearing. At least 30 days before ~~the date of the~~ a hearing, the Clerk shall serve notice of the hearing, by certified mail or personal service, to the appellant, ~~the~~ Department, and all other parties to the appeal.
- C. Contents of a notice of hearing. The Clerk shall ensure that a notice ~~shall contain~~ of hearing contains a statement:
 1. ~~A statement identifying~~ Identifying the Board, the parties, and the matters asserted;
 2. ~~A statement of~~ Establishing the date, time, and place of the hearing;
 3. ~~A statement of~~ Identifying the legal authority and jurisdiction under which the hearing is to be held;

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4. ~~A statement advising~~ Advising the parties of the requirements of R12-5-2305; and
5. ~~A reference to~~ Referencing the particular ~~Sections of the~~ statutes and rules involved.

R12-5-2304. Prehearing Disclosure

- A. Witnesses and ~~Exhibits~~ exhibits. At least ~~10~~ 15 days ~~prior to~~ before the ~~date set for~~ hearing date, each party shall:
1. File with the Clerk:
 - a. A list of all witnesses who may be called to testify on behalf of the party, and
 - b. Eight copies of all documentary exhibits to be offered on behalf of the party; and
 2. Serve upon each other party ~~one~~ a copy of the list of witnesses and a list of all exhibits to be offered on behalf of the party.
- B. The Board shall exclude the testimony of ~~any~~ a witness and the admission of ~~any~~ an exhibit not disclosed ~~pursuant to~~ under subsection (A), unless the Board determines that ~~the~~ admission of the evidence ~~would be~~ is in the ~~interests~~ interest of fairness and justice.

R12-5-2305. Continuances

- A. General. The Chairperson may, for good cause, continue or reschedule ~~any~~ a hearing ~~before the Board~~ on the Chairperson's own motion, ~~on~~ application of a party, or ~~on~~ stipulation of the parties.
- B. Application for continuance.
1. Filing. ~~To obtain~~ A party applying for a continuance of a hearing, a party shall file an application for continuance with the Clerk of the Land Department Board of Appeals and serve a copy of the application on all parties no later than 10 days before the scheduled ~~date of the~~ hearing. ~~The~~ For good cause, the Chairperson may allow ~~the~~ a party to file and serve ~~the motion~~ an application for continuance ~~after the expiration of such period for good cause~~ less than 10 days before the scheduled hearing.
 2. Contents. ~~The~~ A party filing an application for continuance shall state ensure that the application states why the continuance is ~~being~~ requested, why a stipulation from adverse parties was not obtained, and the amount of time ~~being~~ requested.
 - ~~C.3.~~ Response; and reply. ~~Any~~ An opposing party may; file and serve a response within five days after ~~such~~ service of an application for continuance, file and serve a response. A The Board shall permit a reply shall be permitted that is filed and served within five days after the response is served.
- ~~D.C.~~ Stipulations. The parties may stipulate to a continuance. The Board ~~will~~ shall accept ~~such stipulations~~ a stipulation that is filed no later than 72 hours ~~prior to~~ before the ~~date and~~ time scheduled for the hearing.
- ~~E.D.~~ Time limits. ~~Absent consent of~~ Unless the parties agree, the Board shall not grant a continuance ~~cannot be granted which would result in~~ if granting the continuance causes the hearing not ~~being to be~~ conducted in compliance with A.R.S. § 37-215(C).

R12-5-2306. Computation of Time; Additional Time After Service by Mail

- A. Computation. ~~In computing~~ To compute any period of time prescribed or allowed by ~~these rules~~ this Article or by order of the Board, the day of the act, event, or default after which the ~~designated~~ period of time begins to run is not ~~to be~~ included. The last day of the period ~~so computed shall be~~ is included, unless ~~it~~ the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day ~~which that~~ is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is ~~less than seven~~ 10 days or less, intermediate Saturdays, Sundays, and legal holidays ~~shall be~~ are excluded in the computation.
- B. Service by mail. ~~Whenever~~ If a party has a right or is required to do some act or proceed within a prescribed period after ~~the~~ service of a notice or other paper ~~upon the party~~ and if the notice or paper is served by mail, five calendar days ~~shall be~~ are added to the prescribed period.

R12-5-2307. Service of Documents Other than Subpoenas

- A. Method of service. Unless otherwise specified ~~by these rules in this Article~~, service of documents a person shall serve a document other than subpoenas ~~shall be made~~ a subpoena by:
1. ~~Hand delivery~~ Personal service with receipt or certificate of delivery,
 2. Legible ~~facsimile~~ fax with confirmed receipt, or
 3. ~~Personal service, or~~
 4. ~~By regular~~ Regular mail, properly addressed with postage prepaid, ~~to each party in the proceeding.~~
- B. Service on attorney. ~~When~~ If a party has appeared ~~by~~ through an attorney, service upon ~~such~~ the attorney ~~shall be~~ is deemed service upon ~~such~~ the party.
- ~~B.C.~~ Time of service. Service ~~shall be deemed~~ is made at the time of personal service of the ~~document~~ a document is:
1. Personally served; ~~or upon deposit of the document~~
 2. Faxed to the number contained in Board's records for the person being served; or
 3. Deposited in the United States mail, postage prepaid, in a sealed envelope, ~~and~~ addressed to the person being served, at the ~~last known~~ person's address of record.

R12-5-2308. Subpoenas

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- A. Issuance of subpoenas a subpoena. ~~In connection with any hearing, the Chairperson, upon~~ Upon written application of a party or on the Chairperson's own motion, ~~the Chairperson~~ may issue subpoenas a subpoena requiring the attendance and testimony of ~~witnesses a witness~~, or the production of documentary or other tangible evidence, or both. ~~Applications to compel witnesses who are not parties to the proceedings, or agents of such parties, to produce documentary evidence shall specify the books, papers, or documents desired.~~
- B. Specificity required. A party that applies for a subpoena to compel production of documentary or other tangible evidence shall ensure that the application specifically identifies the books, papers, documents, or other evidence to be produced.
- ~~B.C.~~ C. Service of subpoenas a subpoena. Subpoenas shall be personally served. Service of each subpoena is the responsibility of the party requesting the subpoena. A party that applies for a subpoena shall ensure that the subpoena is personally served. The person serving a subpoena shall provide proof of service by filing with the Board a certified statement of the date and manner of service and the name of the person served.
- D. Objection to a subpoena. A party or the person served with a subpoena who objects to the subpoena, or a portion of the subpoena, may file a written objection with the Board. The person filing an objection shall:
1. File it within five days after service of the subpoena or at the beginning of the hearing, whichever occurs first; and
 2. Ensure that the objection states why the subpoena is unreasonable or oppressive or how the desired testimony or evidence may be obtained by an alternative method.

R12-5-2309. Motions

- A. Generally. ~~An application to~~ A party that requests an order or other relief from the Board ~~for an order or other relief shall be made by file a motion~~. Unless the motion is made during a hearing, it a motion shall be made in writing at least 10 days before the hearing. ~~The motion shall state with particularity the grounds on which it is based and shall set forth~~ All motions, whether written or oral, shall state the factual and legal grounds supporting the motion and the relief or order sought. ~~Prehearing motions shall be considered on the written materials submitted by the parties, unless the Chairperson directs otherwise.~~
- B. Response to motion; reply. ~~Any~~ A party may file a response to a ~~prehearing pre-hearing~~ motion within five days after service of ~~such the pre-hearing motion, and~~ The responding party shall serve the response on the moving party. The moving party ~~shall have five days after service of a response to~~ may file a reply ~~to that~~ within five days after service of the response.
- C. Affidavits. ~~Motion documents which rely~~ If a party makes a motion that relies on facts ~~that are neither~~ not apparent in the record, ~~and of which the Board cannot take~~ nor subject to judicial official notice, ~~the party shall be supported~~ support the motion by affidavit or other satisfactory evidence.
- D. Rulings on motions. ~~The Board shall consider a pre-hearing motion on the written materials submitted by the parties, unless the Chairperson directs otherwise.~~ The Chairperson may rule on a procedural motions, motion, but ~~all other motions shall be ruled upon by the~~ The Board shall rule on a non-procedural motion.

R12-5-2310. Hearing

- A. Recording of hearing. The Board shall ensure that a hearing record is made ~~shall be by tape-recorded recorder or stenographically recorded stenographer~~.
- B. Order of appearance. The Chairperson shall designate the order in which parties shall introduce their evidence.
- C. Improper ~~Conduct~~ conduct. ~~Noncompliance~~ It is improper conduct to fail to comply with ~~any an~~ an order of the Chairperson or disruption of any to disrupt a hearing, ~~shall be deemed improper~~ A person who engages in improper conduct and grounds for exclusion shall be excluded from the hearing if the Chairperson determines that exclusion is necessary to facilitate the hearing.

R12-5-2311. Evidence

- A. Generally. ~~All witnesses~~ A witness at a hearing shall testify under oath or affirmation. ~~All~~ To encourage a full and true disclosure of the facts, the Chairperson shall ensure that all parties shall have the right to present ~~such~~ oral or documentary evidence and to conduct ~~such~~ cross-examination as may be required for a full and true disclosure of the facts. The Chairperson shall ~~receive~~ admit evidence that the Chairperson determines is relevant, probative, and material evidence; and rule upon offers of proof; ~~and~~ The Chairperson shall exclude all evidence the Chairperson ~~has determined to be~~ determines is irrelevant, immaterial, or unduly repetitious.
- B. Evidence. The Chairperson may conduct a hearing in an informal manner ~~and~~ without adherence to the rules of evidence required in judicial proceedings.
- C. Official ~~Notice~~ notice. The Board may take official notice of any matter than might be judicially noticed by a superior court of the state of Arizona or any matter that is peculiarly within the knowledge of the Board as an expert body.

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R12-5-2312. Objection to Decision by Chairperson

If any member of the Board objects to a decision of made by the Chairperson ~~pursuant to these rules under this Article~~, the Board member may request that the Board vote on the matter in question and the Chairperson shall submit the matter to a vote of the entire Board.

R12-5-2313. Ex Parte Communications

- A. Prohibitions. ~~In any contested case before the Board, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:~~
- ~~1. No interested person outside the Board shall make or knowingly cause to be made to any Board member, employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding;~~
 - ~~2. No Board member, employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding shall make or knowingly cause to be made to any interested person outside the Board an ex parte communication relevant to the merits of the proceeding. A party shall not communicate, directly or indirectly, orally or in writing, with a member of the Board about any substantive issue relating to a proceeding before the Board unless:~~
 1. All parties are present, either personally or by an attorney;
 2. It is during a scheduled proceeding where an absent party fails to appear after proper notice; or
 3. It is by written motion with a copy to all parties.
- B. Record. ~~A Board member, employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a~~ an ex parte ~~communication prohibited by this rule, shall place in the public record of the proceeding:~~
1. all such A copy of the ex parte communication if the communication is written; or communications and all written responses to the communications and
 2. A summary of the substance of the ex parte communication if the communication is by oral testimony in the record state the substance of all such oral communications.
- C. Action by Board. ~~Upon receipt of a~~ an ex parte ~~communication by a member of the Board made or knowingly caused to be made by a party in violation of this Section, the Board, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party making the ex parte communication to show cause why his the party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such by the violation.~~
- ~~D. Effective time period. The provisions of this Section shall apply beginning at the time in which a notice of appeal is filed in a contested case unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of the person's acquisition of such knowledge.~~

R12-5-2314. Decision of the Board

- A. Time limit. ~~Unless the parties stipulate otherwise, the Board shall render its final decision within 60 days from the date of after the hearing.~~
- B. Contents. ~~The Board's decision Board shall contain its include findings of facts and conclusions of law, separately stated, and in the Board's decision.~~

R12-5-2315. Rehearing or Review of Decision

- A. Generally. ~~Except as provided in subsection (F), any party in a contested case before the Board who is aggrieved by a decision rendered in such case may file with the Board, not later than 15 days after service of the decision, a written motion for rehearing or review of the decision, with supporting memorandum, specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business. The Board may also grant a rehearing or review on its own initiative not later than 15 days after a written decision has been issued. Except as provided in subsection (G), within 30 days after service of notice of a final decision issued by the Board, a party may file with the Board a written motion for rehearing or review of the decision. A party is not required to file a motion for rehearing or review of a decision to exhaust the party's administrative remedies. A party may seek judicial review of the Board's final decision under A.R.S. Title 12, Chapter 7, Article 6.~~
- B. Amendment of motion; response; oral argument. ~~A party may amend a motion for rehearing or review under this rule may be amended at any time before it is ruled upon by the Board rules on the motion. A Another party may file a response may be filed to a motion for rehearing or review within 10 days after service of such the motion or amended motion by any other party. Motions and responses A party shall ensure that a motion or response is shall be supported by memoranda a memorandum discussing legal and factual issues. Oral argument may be requested by either party or by the Board.~~
- C. Grounds for rehearing or review. ~~A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights: The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:~~
- ~~1. Irregularity in the administrative proceedings of the Board or its staff or the prevailing party, or any order or abuse of~~

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- discretion ~~which that~~ deprived the moving party of a fair hearing;
2. Misconduct of the Board, ~~or~~ its staff, or the prevailing party;
 3. Accident or surprise ~~which that~~ could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence ~~which that~~ could not, with reasonable diligence, have been discovered and produced at the ~~original~~ hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the ~~administrative~~ hearing or during the progress of the proceedings; or
 6. ~~That the~~ The findings of fact or decision is not justified by the evidence or is contrary to law.
- D.** Affirmation or modification of decision; grant of rehearing or review. The Board may affirm or modify ~~the a~~ decision or grant a rehearing or review to all or ~~any some~~ of the parties on all or ~~part some~~ of the issues for any of the reasons ~~set forth~~ listed in subsection (C); ~~and~~. The Board shall specify with particularity the grounds for an order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- E.** ~~after giving notice and an opportunity to be heard, the Board may grant a rehearing for reasons not specified in a party's motion. An order modifying a decision or granting a rehearing shall specify the grounds for such order. Board-initiated rehearing or review. Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of the decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in a motion. The Board shall specify with particularity the grounds on which a rehearing or review is granted under this subsection.~~
- E.F.** Affidavits. When a party bases a motion for a rehearing or review upon affidavits, they the party shall be served ~~serve the affidavits~~ with the motion. An opposing party may, within ~~40~~ 15 days after ~~such~~ service, serve opposing affidavits; ~~Which This~~ period may be extended for an additional period not exceeding 10 days by the Chairperson of the Board for a maximum 10 days for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted. The Board may permit a party to file a reply affidavit.
- F.G.** Emergencies. If in a particular decision the Board makes specific findings that the immediate effectiveness of such decision is necessary for the preservation of the public health and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions. Exigency. If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.
- G.H.** ~~Time Limits limits. A~~ The Board shall rule on a motion for review or rehearing will be considered expeditiously and in no case more than within 90 days after it has been is filed. If the Board grants a rehearing is granted or review, the Board shall conduct the rehearing or review it will be held expeditiously and in no case more than within 90 days after issuing the order granting the rehearing has been or review issued.

NOTICE OF FINAL RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 5. CORPORATION COMMISSION
TRANSPORTATION**

[R07-414]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R14-5-202 | Amend |
| R14-5-203 | Amend |
| R14-5-204 | Amend |
| R14-5-205 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

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Authorizing statute: A.R.S. §§ 40-202, 40-203, 40-321, 40-441 and 40-442 et seq.

Constitutional authority: Arizona Constitution, Article XV

Implementing statute: Not applicable

3. The effective date of the rules:

January 25, 2008

The Commission approved these rules at an open meeting on June 27, 2007. Commission Decision No. 69675 was issued on June 28, 2007. Since these rules must be submitted to the Attorney General under A.R.S. §§ 41-1044 and 41-1057, and because the Attorney General has 60 days to either approve or disapprove, the effective date of these rules shall be 60 days after the Attorney General approves the rules and submits the rules package with the Secretary of State per A.R.S. § 41-1032.

4. A list of all previous notices appearing in the *Register* addressing the proposed rule:

Notice of Rulemaking Docket Opening: 13 A.A.R. 162, January 19, 2007

Notice of Proposed Rulemaking: 13 A.A.R. 152, January 19, 2007

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Charles Hains, Commission Counsel, Legal Division

Address: Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-6026

Fax: (602) 542-4870

E-mail: Chains@azcc.gov

6. An explanation of the rule, including the agency's reasons for initiating the rule:

Staff is proposing amendments to transportation rules R14-5-202, R14-5-203, R14-5-204 and R14-5-205. The amendments will update the rules to incorporate the most recent amendments to the Code of Federal Regulations (CFR), Title 49, Parts 40, 191, 192, except I (2) and (3) of Appendix D to Part 192, 193, 195 (except 195.1(b)(2) and (3)) and 199 revised in part as of October 1, 2005, in part as of August 1, 2006.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

This rule does not diminish a previous grant of authority of a political subdivision of this state.

9. The summary of the economic, small business, and consumer impact:

Small Business Subject to the Rules: There will be no impact on master meter system operators if they are already complying with current Federal Pipeline Safety Regulations. There will be no direct impact of the State rule changes. Indirectly however, the change in federal regulations, that the ACC is required to adopt, will have a minimum (operators other than Southwest Gas) to moderate impact (estimated to be over \$1 million but less than \$5 million for Southwest Gas) on operators of natural gas or other gas systems if they are already complying with current Federal Pipeline Safety Regulations. Lastly, there will be no impact on operators of hazardous liquid pipelines if they are already complying with current Federal Pipeline Safety Regulations.

Consumer impact: The proposed amendments to the existing rules should have no direct impact; however, the change in federal rules will have a minimal impact on consumers or users of the gas service provided by regulated public utilities. As major utilities such as Southwest Gas come to the ACC for future rate cases, they will include some increased costs due to complying with the new federal regulations. On the other hand, it is impossible to forecast the exact impact on final rates of any one issue at this time. The utilities are presently required to be in compliance with all standards, but, the new regulations will benefit consumers, users and the general public by enhancing the safe operation and maintenance of pipeline systems.

The proposed rules are the least costly method for obtaining compliance with the long standing minimum safety standards. The rules do not impose additional standards. There is no less intrusive method.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

In R14-5-203 and R14-5-204, the Commission changed the name of the incident report form replacing "RSPA" with "PHMSA" in several places. The Commission also changed the title and address of the reporting agency to reflect the

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changes made at the U.S. Department of Transportation from “Research and Special Programs Administration” to “Pipeline and Hazardous Material Safety Administration, Rm. 7128, 400 Seventh St., S.W.”

11. A summary of the comments made regarding the rules and the agency response to them:

A public comment hearing was held on February 27, 2007. No members of the public appeared to make a public comment. Southwest Gas filed public comments in support of the Commission’s proposed rulemaking. Southwest Gas specifically supported proposed amendments to R14-5-202 and R14-5-205, but submitted alternative amendments to R14-5-203 and R14-5-204 which included additional amendments to account for the updates that were made to the forms that are drafted by the United States Department of Transportation. Commission Staff concurred with the additional changes proposed by Southwest Gas. The additional amendments did not result in any substantive changes in Staff’s proposed amendments and will not require any additional notice or publication since Southwest sent copies of its comments to all parties on the service list and no further comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

Title 49, Code of Federal Regulations (CFR), Parts 40, 191, 192, except I (2) and (3) of Appendix D to Part 192, 193, 195 (except 195.1(b)(2) and (3)) and 199 revised in part as of October 1, 2005, in part as of August 1, 2006. These regulations cover the minimum safety standards for construction and operation of gas and hazardous liquid pipelines. These regulations may be found at the Arizona Corporation Commission, Office of Pipeline Safety, 2200 N. Central Ave., Suite 300, Phoenix, AZ 85004. These regulations are incorporated by reference in the amended rules at: R14-5-202.B, C, J, K; R14-5-203.C; R14-5-204.A, B; and R14-5-205.B, C, and G.

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 5. CORPORATION COMMISSION
TRANSPORTATION**

ARTICLE 2. PIPELINE SAFETY

Section

- R14-5-202. Construction and Safety Standards
R14-5-203. Pipeline Incident Reports and Investigations
R14-5-204. Annual Reports
R14-5-205. Master Meter System Operators

ARTICLE 2. PIPELINE SAFETY

R14-5-202. Construction and Safety Standards

- A. Applicability: This rule applies to the construction, reconstruction, repair, operation and maintenance of all intrastate natural gas, other gas, LNG and hazardous liquid pipeline systems, as described in A.R.S. § 40-441.
- B. Subject to the definitional changes in R14-5-201 and the revisions noted in subsection (C), the Commission adopts, incorporates, and approves as its own 49 CFR 40, 191, 192 except I (2) and (3) of Appendix D to Part 192, 193, 195, except 195.1(b)(2) and (3), and 199, revised as of ~~January 15, 2004~~ August 1, 2006 (and no future amendments), incorporated by reference and copies available from the Office of Pipeline Safety, 2200 ~~North N. Central Avenue Ave., Suite Ste. 300,~~ Phoenix, ~~Arizona AZ~~ 85004 and the United States Government Printing Office, P.O. Box 371954, Pittsburgh, ~~Pennsylvania PA~~ 15250-7954.
- C. The above mentioned incorporated Parts of 49 CFR, except Parts 191, 193 Subpart A and 195 Subpart A and B, are revised as follows:
1. Substitute “Commission” where “Administrator of the Research and Special Programs Administration” or “Office of Pipeline Safety” (OPS) appear.
 2. Substitute “Office of Pipeline Safety, Arizona Corporation Commission, at its office in Phoenix, Arizona” where the address for the Information Resources Manager, Office of Pipeline Safety, ~~Research and Special Programs Administration, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation~~ appears.
- D. Operators of an intrastate pipeline will file with the Commission an Operation and Maintenance Plan (O & M), including an emergency plan, 30 days prior to placing a pipeline system into operation. Any changes in existing plans will be filed

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within 30 days of the effective date of the change.

- E. Operators of an intrastate pipeline transporting sour gas or oil are subject to industry standards addressing facilities handling hydrogen sulfide (H₂S). Standards adopted are:
 1. NACE Standard MR-0175-99 (1999 Revision); (and no future revisions), Standard Materials Requirements-Sulfide Stress Cracking Resistant Metallic Material for Oilfield Equipment, incorporated by reference and no future amendments. Copies are available from the Office of Pipeline Safety, 2200 North N. Central Avenue Ave., Suite Ste. 300, Phoenix, Arizona AZ 85004 and the NACE International, 1440 South S. Creek Drive Dr., Houston, Texas TX 77084-4906.
 2. API RP55 (1995 Edition); (and no future amendments), API recommended practice for conducting oil and gas production operations involving hydrogen sulfide, incorporated by reference and no future amendments. Copies are available from the Office of Pipeline Safety, 2200 North N. Central Avenue Ave., Suite Ste. 300, Phoenix, Arizona AZ 85004 and Techstreet, 777 East E. Eisenhower Parkway Pkwy., Ann Arbor, Michigan MI 48108.
- F. Operators of an intrastate pipeline transporting LNG, hazardous liquid, natural gas or other gas will not construct any part of a hazardous liquid, LNG, natural gas or other gas pipeline system under a building. For building encroachments over a pipeline system, the operator may require the property owner to remove the building from over the pipeline or reimburse the operator the cost associated with relocating the pipeline system. The encroachment shall be resolved within 180 days of discovery, or the operator shall discontinue service to the pipeline system. When the encroachment ~~can not~~ cannot be resolved within the 180 days the operator shall submit to the Office of Pipeline Safety within 90 days of discovery a written plan to resolve the encroachment. The Office of Pipeline Safety may then extend the 180-day requirement in order to allow the ratepayer and the operator to implement the written plan to resolve the encroachment.
- G. Operators of an intrastate distribution pipeline transporting natural gas or other gas will not construct any part of a pipeline system closer than 8 inches to any other underground structure. If the 8-inch clearance cannot be maintained from other underground structures, a sleeve, casing, or shielding shall be used.
- H. Operators of an intrastate pipeline transporting natural gas or other gas that have regulators, meters, or regulation meter sets that have been out of service for 36 months will abandon those lines and cap all ends. The Operator's steps to accomplish the abandonment shall not exceed six months beyond the 36 months out service status.
- I. Operators of an intrastate pipeline shall not install or operate a gas regulator that might release gas in its operation closer than ~~three~~ 3 feet to a source of ignition, opening into a building, air intake into a building or to any electrical source not intrinsically safe. The ~~three-foot~~ 3-foot clearance from a source of ignition will be measured from the vent or source of release (discharge port), not from the physical location of the meter set assembly. This subsection shall not be effective with respect to building permits which are issued and subdivisions which are platted prior to October 1, 2000. For encroachment within the required ~~three-foot~~ 3-foot clearance caused by an action of the property owner, occupant or a service provider, after the effective date of this rule the operator may require the property owner to resolve the encroachment or reimburse the operator the cost associated with relocating the pipeline system. The encroachment shall be resolved within 180 days of discovery or the operator shall discontinue service to the effected pipeline system. When the encroachment cannot be resolved within the 180 days the operator shall submit to the Office of Pipeline Safety within 90 days of discovery a written plan to resolve the encroachment. The Office of Pipeline Safety may then extend the 180-day requirement in order to allow the ratepayer and the operator to implement the written plan to resolve the encroachment.
- J. Operators of an intrastate pipeline transporting LNG, natural gas, other gases or hazardous liquid will utilize a cathodic protection system designed to protect the metallic pipeline in its entirety, in accordance with 49 CFR 192, Subpart I, ~~January 15, 2004~~ August 1, 2006 (and no future amendments), incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 North N. Central Avenue Ave., Suite Ste. 300, Phoenix, Arizona AZ 85004, and the United States Government Printing Office, P.O. Box 371954, Pittsburgh, ~~Pennsylvania PA~~ 15250-7954, except I (2) and (3) of Appendix D to Part 192 shall not be utilized.
- K. Operators of an intrastate pipeline transporting natural gas or other gas will not use solvent cement to join together plastic pipe manufactured from different materials unless the operator utilizes a joining procedure in accordance with the specifications of 49 CFR 192, Subpart F, ~~January 15, 2004~~ August 1, 2006 (and no future amendments), incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 North N. Central Avenue Ave., Suite Ste. 300, Phoenix, Arizona AZ 85004, and the United States Government Printing Office, P.O. Box 371954, Pittsburgh, ~~Pennsylvania PA~~ 15250-7954.
- L. Operators of an intrastate pipeline transporting hazardous liquid, natural gas or other gas will not install Acrylonitrile-Butadiene-Styrene (ABS) or aluminum pipe in their pipeline systems.
- M. Operators of an intrastate pipeline transporting hazardous liquid, natural gas or other gas will not install plastic pipe aboveground unless the plastic pipeline is protected by a metal casing, or equivalent, and approved by the Office of Pipeline Safety. Temporary aboveground plastic pipeline bypasses are permitted for up to ~~sixty (60)~~ 60 days, provided that the plastic pipeline is protected and is under the direct supervision of the operator at all times.
- N. Operators of an intrastate pipeline transporting hazardous liquid, natural gas or other gas that construct a pipeline system or any portion thereof using plastic pipe, will install, at a minimum, a 14-gauge coated or corrosion resistant, electrically conductive wire as a means of locating the pipe while it is underground. Tracer wire shall not be wrapped around the plas-

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tic pipe, tracer wire may be taped, or attached in some manner to the pipe provided that the adhesive or the attachment is not detrimental to the integrity of the pipe wall.

- O. Operators of an intrastate pipeline transporting natural gas, other gas or hazardous liquid, that construct an underground pipeline system using plastic pipe, will bury the installed pipe with a minimum of 6 inches of sandy type soil surrounding the pipe for bedding and shading, free of any rock or debris, unless otherwise protected and approved by the Office of Pipeline Safety. Steel pipe shall be installed with bedding and shading, free of any debris or materials injurious to the pipe coating, unless otherwise protected and approved by the Office of Pipeline Safety.
- P. Operators of an intrastate pipeline transporting natural gas or other gas that construct an underground pipeline system using plastic pipe will install the pipe with sufficient slack to allow for thermal expansion and contraction. In addition, all plastic pipe and fittings shall be marked CD, CE, CF or CG as required by ASTM D2513 (1995c Edition and no future editions), incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 ~~North N. Central Avenue Ave., Suite Ste.~~ 300, Phoenix, ~~Arizona AZ~~ 85004 and ASTM International, 100 Barr Harbor ~~Drive Dr.~~, P.O. Box C700, ~~West W.~~ Conshohocken, ~~Pennsylvania PA~~ 19428-2959, for areas where the service temperature is above 100° F.
- Q. Operators of an intrastate pipeline system transporting hazardous liquid, natural gas or other gases shall qualify welding procedures and shall perform welding of steel pipelines in accordance with API Standard 1104. Each welder must be qualified in accordance with API Standard 1104, 49 CFR 192, appendix A. The qualification of welders delineated in 49 CFR 192, appendix C may be used for low stress level pipe.
- R. Operators of an intrastate pipeline transporting natural gas or other gas pipeline system shall survey and grade all detected leakage by the following guide: ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983 except 4.4(c) (1983 Revision and no future revisions), incorporated by reference and copies available from the Office of Pipeline Safety, 2200 ~~North N. Central Avenue Ave., Suite Ste.~~ 300, Phoenix, ~~Arizona AZ~~ 85004 and the ASME, United Engineering Center, 345 ~~East E.~~ 47th ~~Street St.~~, New York, ~~N.-Y. NY~~ 10017. ("Should" as referenced in the Guide will be interpreted to mean "shall"). Leakage survey records shall identify in some manner each pipeline surveyed. Records shall be maintained to demonstrate that the required leakage survey has been conducted.
- S. Laboratory testing of intrastate pipelines shall be conducted in accordance with the following:
 - 1. If an operator of an intrastate natural gas, other gas, or hazardous liquid pipeline removes a portion of a failed pipeline, where the cause of the failure is unknown, as the result of an incident that requires a telephonic or written incident report under R14-5-203(B) or (C), the operator shall retain the portion that was removed and shall telephonically notify the Office of Pipeline Safety of the removal within two hours after the removal is completed. A notice made pursuant to this subsection shall include all of the following:
 - a. Identity of the failed pipeline,
 - b. Description and location of the failure,
 - c. Date and time of the removal,
 - d. Length or quantity of the removed portion,
 - e. Storage location of the removed portion,
 - f. Any additional information about the failure or the removal of the portion of the pipeline that failed that is requested by the Office of Pipeline Safety. An unknown failure is any failure where the cause of the failure is not observable external corrosion, third-party damage, natural or other outside forces, construction or material defect, equipment malfunction or incorrect operations; or is any failure where the Office of Pipeline Safety and the operator do not agree as to the cause of the failure.
 - 2. Within 48 hours after telephonic notification pursuant to subsection (1), the Office of Pipeline Safety shall notify the operator that either:
 - a. The Office of Pipeline Safety is directing the operator to have the portion of the pipeline that was removed tested by a laboratory to determine the cause or causes of the failure; or
 - b. The Office of Pipeline Safety is not directing laboratory testing and the operator may discard the portion of the pipeline that was removed. The Office of Pipeline Safety shall confirm its notification in writing.
 - 3. If the Office of Pipeline Safety directs laboratory testing pursuant to subsection (2)(a):
 - a. The Office of Pipeline Safety shall:
 - i. Determine the laboratory that will do the testing pursuant to subsection (4) and the period of time within which the testing is to be completed.
 - ii. Approve the number and types of tests to be performed.
 - iii. Notify the operator of its determinations pursuant to subsections (3)(a)(i) and (ii).
 - b. The operator shall:
 - i. Notify the Office of Pipeline Safety of the number and types of tests proposed by the operator.
 - ii. Notify the Office of Pipeline Safety of the date and time of any laboratory tests at least 20 days before the tests are done.
 - iii. At the request of the Office of Pipeline Safety, ensure that a representative of the Office of Pipeline Safety is permitted to observe any or all of the tests.
 - iv. Ensure that the original laboratory test results are provided to the Office of Pipeline Safety within 30 days of

- the completion of the tests.
- v. Pay for the laboratory testing.
- 4. In determining a laboratory pursuant to subsection (3)(a)(i), the Office of Pipeline Safety shall:
 - a. Submit a written request to at least three different laboratories for bids to conduct the testing.
 - b. Consider the qualifications of the respondent laboratories to perform the testing, including:
 - i. Past experience in performing the required test or tests according to ASTM International standards.
 - ii. Any recognition that the laboratory may demonstrate with national or international laboratory accreditation bodies.
 - c. Select the laboratory that offers the optimum balance between cost and demonstrated ability to perform the required test or tests.
 - d. The Office of Pipeline Safety shall not select a laboratory pursuant to this subsection before either of the following, which ever occurs first:
 - i. The Office of Pipeline Safety has received written bids from at least three different laboratories.
 - ii. Thirty days from the date of the request for bids has passed.
- T. All repair work performed on an existing intrastate pipeline transporting LNG, hazardous liquids, natural gas or other gas will comply with the provisions of this Article.
- U. The Commission may waive compliance with any of the aforementioned parts upon a finding that such a waiver is in the interest of public and pipeline safety.
- V. To ensure compliance with provisions of this rule the Commission or an authorized representative thereof may enter the premises of an operator of an intrastate pipeline to inspect and investigate the property, books, papers, business methods, and affairs that pertain to the pipeline system operation.
- W. All other Commission administrative rules are superseded to the extent they are in conflict with the pipeline safety provisions of this Article.

R14-5-203. Pipeline Incident Reports and Investigations

- A. Applicability. This rule applies to all intrastate pipeline systems.
- B. Required incident reports by telephone:
 - 1. Operators of an intrastate pipeline transporting LNG, natural gas or other gas will notify by telephone the Office of Pipeline Safety immediately upon discovery of the occurrence of any of the following:
 - a. The release of natural gas, other gas or liquefied natural gas (LNG) from a pipeline or LNG facility, when any of the following results:
 - i. Death or personal injury requiring hospitalization.
 - ii. An explosion or fire not intentionally set by the operator.
 - iii. Property damage, including the value of the gas lost, estimated in excess of \$5,000.
 - b. Emergency transmission pipeline shutdown.
 - c. News media inquiry.
 - d. Overpressure of a pipeline system where a pipeline operating at less than 12 PSIG exceeds MAOP by 50%, where a pipeline operating between 12 PSIG and 60 PSIG exceeds MAOP by 6 PSIG or where a pipeline operating over 60 PSIG exceeds MAOP plus 10%.
 - e. Permanent or temporary discontinuance of gas service to a master meter system or when assisting with the isolation of any portion of a gas master meter system due to a failure of a leak test.
 - f. Emergency shutdown of a LNG process or storage facility.
 - 2. Operators of an intrastate pipeline transporting hazardous liquid will notify by telephone the Office of Pipeline Safety immediately upon discovery of the occurrence of any of the following:
 - a. Death or personal injury requiring hospitalization.
 - b. An explosion or fire not intentionally set by the operator.
 - c. Property damage estimated in excess of \$5,000.
 - d. Pollution of any land, stream, river, lake, reservoir, or other body of water that violates applicable environmental quality, water quality standards, causes a discoloration of the surface of the water or adjoining shoreline, or deposits sludge or emulsion beneath the surface of the water or upon adjoining shorelines.
 - e. News media inquiry.
 - f. Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if the release is:
 - i. Not otherwise reportable under this Section;
 - ii. Not one described in 49 CFR 195.52(a)(4) (1994 revision and no future revisions), incorporated by reference and copies available from the Office of Pipeline Safety, 2200 North N. Central Avenue Ave., Suite Ste. 300, Phoenix, Arizona AZ 85004;
 - iii. Confined to company property or pipeline right-of-way; and
 - iv. Cleaned up promptly.

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- g. Any release of hazardous liquid or carbon dioxide, that was significant in the judgment of the operator even though it did not meet the criteria of this subsection.
 - 3. Telephone incident reports will include the following information:
 - a. Name of the pipeline system operator,
 - b. Name of the reporting party,
 - c. Job title of the reporting party,
 - d. The reporting party's telephone number,
 - e. Location of the incident,
 - f. Time of the incident, and
 - g. Fatalities and injuries, if any.
- C. Require written incident report:
- 1. Operators of an intrastate pipeline transporting natural gas, LNG or other gases will file a written incident report when an incident occurs involving a natural gas or other gas pipeline that results in any of the following:
 - a. An explosion or fire not intentionally set by the operator.
 - b. Injury to a person that results in one or more of the following:
 - i. Death.
 - ii. Loss of consciousness.
 - iii. Need for medical treatment requiring hospitalization.
 - c. Property damage, including the value of the lost gas, estimated in excess of \$5,000.
 - d. Emergency transmission pipeline shutdown.
 - e. Overpressure of a pipeline system where a pipeline operating at less than 12 PSIG exceeds MAOP by 50%, where a pipeline operating between 12 PSIG and 60 PSIG exceeds MAOP by 6 PSIG or where a pipeline operating over 60 PSIG exceeds MAOP plus 10%.
 - f. Emergency shutdown of a LNG process or storage facility.
 - 2. Written incident reports concerning natural gas or other gas pipeline systems will be in the following form:
 - a. ~~RSPA PHMSA~~ F7100.1 - Distribution System: Incident Report, (March, 2004 Revision and no future revisions) incorporated by reference and copies available from the Office of Pipeline Safety, 2200 ~~North N.~~ Central ~~Avenue Ave.~~, Suite ~~Ste.~~ 300, Phoenix, ~~Arizona AZ~~ 85004.
 - b. ~~RSPA PHMSA~~ F7100.2 - Transmission and Gathering System: Incident Report, (January, 2002 Revision and no future revisions) incorporated by reference and copies available from the Office of Pipeline Safety, 2200 ~~North N.~~ Central ~~Avenue Ave.~~, Suite ~~Ste.~~ 300, Phoenix, ~~Arizona AZ~~ 85004.
 - c. Written incident reports with respect to LNG facilities will be in an investigative form defining the incident and corrective action taken to prevent a reoccurrence.
 - 3. Operators of an intrastate pipeline transporting hazardous liquid will make a written incident report on ~~RSPA PHMSA~~ F 7000-1, (January 2001 Revision and no future revisions), incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 ~~North N.~~ Central ~~Avenue Ave.~~, Suite ~~Ste.~~ 300, Phoenix, ~~Arizona AZ~~ 85004, when there is a release of hazardous liquid which results in any of the following:
 - a. An explosion or fire not intentionally set by the operator.
 - b. Injury to a person that results in one or more of the following:
 - i. Death.
 - ii. Loss of consciousness.
 - iii. Inability to leave the scene of the incident unassisted.
 - iv. Need for medical treatment.
 - v. Disability which interferes with a person's normal daily activities beyond the date of the incident.
 - c. Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if the release is:
 - i. Not otherwise reportable under this Section;
 - ii. Not one described in 49 CFR 195.52 (a)(4); (1994 revision and no future revisions), incorporated by reference and copies available from the Office of Pipeline Safety, 2200 ~~North N.~~ Central ~~Avenue Ave.~~, Suite ~~Ste.~~ 300, Phoenix, ~~Arizona AZ~~ 85004;
 - iii. Confined to company property or pipeline right-of-way; and
 - iv. Cleaned up promptly.
 - d. Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$5,000.
 - e. News media inquiry.
 - 4. Written incident reports as required in this Section will be filed with the Office of Pipeline Safety, within the time specified below:
 - a. Natural gas, LNG or other gas - within 20 days after detection.

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- b. Hazardous liquids - within 15 days after detection.
 5. The Operators shall also file a copy of all DOT required written incident reports with the Information Resources Manager, Office of Pipeline Safety, ~~Research and Special Programs Administration~~ Pipeline and Hazardous Materials Safety Administration, Rm. 7128, 400 Seventh St., S.W., U.S. Department of Transportation, Washington, DC 20590.
 6. Operators of a natural gas or other gas pipeline system will request a clearance from the Office of Pipeline Safety prior to turning on or reinstating service to a master meter operator.
- D. Investigations by the Commission:**
1. The Office of Pipeline Safety will investigate the cause of incidents resulting in death or serious injury.
 2. Pursuant to an investigation under this rule, the Commission, or an authorized agent thereof, may:
 - a. Inspect all plant and facilities of a pipeline system.
 - b. Inspect all other property, books, papers, business methods, and affairs of a pipeline system.
 - c. Make inquiries and interview persons having knowledge of facts surrounding an incident.
 - d. Attend, as an observer, hearings and formal investigations concerning pipeline system operators.
 - e. Schedule and conduct a public hearing into an incident.
 3. The Commission may issue subpoenas to compel the production of records and the taking of testimony.
 4. Incidents not reported in accordance with the provisions of this rule will be investigated by the Office of Pipeline Safety.
 5. Incidents referred to in incomplete or inaccurate reports will be investigated by the Office of Pipeline Safety.
 6. Late filed incident reports will be accompanied by a letter of explanation. Incidents referred to in late filed reports may be investigated by the Office of Pipeline Safety.

R14-5-204. Annual Reports

- A. Except for operators of an intrastate pipeline transporting LNG, all other intrastate pipeline operators will file with the Office of Pipeline Safety, not later than March 15, for the preceding calendar year, the following appropriate report(s):
1. ~~RSPA PHMSA F 7000-1.1 (February 2004 April 2006 Edition and no future editions)~~ – “Annual Report for calendar year 20__, hazardous liquid or carbon dioxide systems” and “Instructions for completing ~~RSPA PHMSA F 7000-1.1 (Rev. 04-2006)~~, Annual Report for calendar year 20__ hazardous liquid or carbon dioxide systems,” incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 ~~North N. Central Avenue Ave., Suite Ste.~~ 300, Phoenix, ~~Arizona AZ~~ 85004 and the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, ~~Room 2335 Rm. 7128~~ 400 Seventh ~~Street St.~~ S.W., Washington, DC 20590.
 2. ~~RSPA PHMSA F7100.1-1 (November 1985 Edition for use in 2004; March 2005 December 2005 Edition and no future editions) - which can be used in 2004 but will become mandatory starting in 2005)~~ “Annual Report for Calendar Year 20__, Gas Distribution System” and “Instructions for Completing ~~RSPA PHMSA Form F7100.1-1~~, Annual Report for Calendar Year 20__, Gas Distribution System,” incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 ~~North N. Central Avenue Ave., Suite Ste.~~ 300, Phoenix, ~~Arizona AZ~~ 85004 and the Information Resources Manager, Office of Pipeline Safety, ~~Research and Special Programs Administration~~ Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, ~~Room 8417 Rm. 7128~~, 400 Seventh ~~Street St.~~ S.W., Washington, D.C. 20590.
 3. ~~RSPA PHMSA F7100.2-1 (December 2003 2005 Edition and no future editions)~~ - “Annual Report for Calendar Year 20__, Gas Transmission and Gathering Systems” and “Instructions for Completing Form ~~RSPA PHMSA F7100.2-1 (Rev. 12-2005)~~, Annual Report for Calendar Year 20__, Gas Transmission and Gathering Systems,” incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 ~~North N. Central Avenue Ave., Suite Ste.~~ 300, Phoenix, ~~Arizona AZ~~ 85004 and the Information Resources Manager, Office of Pipeline Safety, ~~Research and Special Programs Administration~~ Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, ~~Room 8417 Rm. 7128~~, 400 Seventh ~~Street St.~~ S.W., Washington, D.C. 20590.
- B. The operator will also file a copy of all required annual reports by March 15 to the Information Resources Manager, Office of Pipeline Safety, ~~Research and Special Programs Administration~~ Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, ~~Rm. 7128~~, 400 Seventh ~~Street St.~~ S.W., Washington, D.C. 20590-0001.

R14-5-205. Master Meter System Operators

- A. Applicability. This rule applies to the construction, reconstruction, repair, emergency procedures, operation and maintenance of all master meter systems, as a condition of receiving service from public service corporations. Noncompliance with this rule by operators of a master meter system shall constitute grounds for termination of service by the public service corporation when informed in writing by the Office of Pipeline Safety. In case of an emergency, the Office of Pipeline Safety may give the public service corporation oral instructions to terminate service, with written confirmation to be furnished within 24 hours.
- B. Subject to the definitional changes in R14-5-201 and the revisions noted in subsection (C), the Commission adopts, incorporates, and approves as its own 49 CFR 191 and 192, revised as of ~~January 15, 2004~~ August 1, 2006 (and no future

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amendments), incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 ~~North N.~~ Central Avenue Ave., Suite Ste. 300, Phoenix, ~~Arizona AZ~~ Arizona AZ 85004 and the United States Government Printing Office, P.O. Box 371954, Pittsburgh, ~~Pennsylvania PA~~ Pennsylvania PA 15250-7954.

- C. The above mentioned incorporated parts of 49 CFR, except Part 191, are revised as follows:
1. Substitute "Commission" where "Administrator of the Research and Special Programs Administration," or "Office of Pipeline Safety" (OPS) appear.
 2. Substitute Office of "Pipeline Safety, Arizona Corporation Commission, at its office in Phoenix, Arizona" where the address for the Information Resources Manager, Office of Pipeline Safety, ~~Research and Special Programs Administration Pipeline and Hazardous Materials Safety Administration~~, U.S. Department of Transportation appears.
- D. Operators of a master meter system will establish an Operation and Maintenance Plan (O & M) including an emergency plan. The plans must be maintained at the master meter system location.
- E. Operators of a master meter system will not construct any part of a natural gas or other gas system under a building or permit a building to be placed over a pipeline. Within 180 days of discovery of a building being located over a pipeline, the operator shall remove the building from over the pipeline, relocate the pipeline or discontinue the service to the pipeline located under the building.
- F. Operators of a master meter system will not install Acrylonitrile-Butadiene-Styrene (ABS) or aluminum pipe in their systems.
- G. Operators of a master meter system will not use solvent cement to join together plastic pipe manufactured from different materials unless the operator utilizes a joining procedure in accordance with the specifications of 49 CFR 192, Subpart F, ~~January 15, 2004 August 1, 2006~~ (and no future amendments), incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 ~~North N.~~ Central Avenue Ave., Suite Ste. 300, Phoenix, ~~Arizona AZ~~ Arizona AZ 85004 and the United States Government Printing Office, P.O. Box 371954, Pittsburgh, ~~Pennsylvania PA~~ Pennsylvania PA 15250-7954.
- H. Operators of a master meter system that construct a pipeline or any portion thereof using plastic pipe will install, at a minimum, a 14-gauge coated or corrosion resistant, electrically conductive wire as a means of locating the pipe while it is underground. Tracer wire shall not be wrapped around the plastic pipe, tracer wire may be taped, or attached in some manner to the pipe provided that the adhesive or the attachment is not detrimental to the integrity of the pipe wall.
- I. Operators of a master meter system that construct an underground pipeline using plastic pipe, will bury the installed pipe with a minimum of 6 inches of sandy type soil surrounding the pipe for bedding and shading, free of any rock or debris, unless otherwise protected and approved by the Office of Pipeline Safety. Steel pipe shall be installed with bedding and shading, free of any debris or materials injurious to the pipe coating, unless otherwise protected and approved by the Office of Pipeline Safety.
- J. Operators of a master meter system that construct an underground pipeline using plastic pipe will install the pipe with sufficient slack to allow for thermal expansion and contraction. In addition, all plastic pipe and fittings shall be marked CD, CE, CF or CG as required by ASTM D2513 (1995c Edition and no future editions), incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 ~~North N.~~ Central Avenue Ave., Suite Ste. 300, Phoenix, ~~Arizona AZ~~ Arizona AZ 85004 and ASTM International, 100 Barr Harbor ~~Drive Dr.~~, P.O. Box C700, ~~West W.~~ Conshohocken, Pennsylvania PA 19428-2959, for areas where the service temperature is above 100° F.
- K. Operators of a master meter gas system shall qualify welding procedures and shall perform welding of steel pipelines in accordance with API Standard 1104. Each welder must be qualified in accordance with API Standard 1104, 49 CFR 192, appendix A.
- L. All repair work performed on existing master meter systems will comply with the provisions of this Article.
- M. Operators of a master meter system will not construct any part of a natural gas or other gas system closer than 8 inches to any other underground structure.
- N. Operators of a master meter system will file a Notice of Construction 30 days prior to commencement of the construction of any pipeline. The Notice will contain the following information:
1. The dates of construction,
 2. The size and type of pipe to be used,
 3. The location of construction, and
 4. The Maximum Allowable Operating Pressure (MAOP).
- O. Operators of a master meter system will perform leakage surveys at intervals not exceeding 15 months but at least once each calendar year and will survey and grade all detected leakage by the following guide -- ASME Guide for Gas Transmission and Distribution Pipeline System, Guide Material, Appendix G-11-1983 (1983 Revision and no future revisions), except 4.4(c), incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 ~~North N.~~ Central Avenue Ave., Suite Ste. 300, Phoenix, ~~Arizona AZ~~ Arizona AZ 85004 and the ASME, United Engineering Center, 345 ~~East E.~~ Street St., New York, ~~New York NY~~ New York NY 10017. ("Should" as referenced in the guide will be interpreted to mean "shall".) Leak detection procedures shall be approved by the Office of Pipeline Safety.
- P. Laboratory testing of master meter systems shall be conducted in accordance with the following:
1. If an operator of a master meter system, other gas or hazardous liquid pipeline removes a portion of a failed pipeline, where the cause of the failure is unknown, as the result of an incident that requires a telephonic or written incident

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report under R14-5-203(B) or (C), the operator shall retain the portion that was removed and shall telephonically notify the Office of Pipeline Safety of the removal within two hours after the removal is completed. A notice made pursuant to this subsection shall include all of the following:

- a. Identity of the failed pipeline,
- b. Description and location of the failure,
- c. Date and time of the removal,
- d. Length or quantity of the removed portion,
- e. Storage location of the removed portion,
- f. Any additional information about the failure or the removal of the portion of the pipeline that failed that is requested by the Office of Pipeline Safety. An unknown failure is any failure where the cause of the failure is not observable external corrosion, third-party damage, natural or other outside forces, construction or material defect, equipment malfunction or incorrect operations; or is any failure where the Office of Pipeline Safety and the operator do not agree as to the cause of the failure.

2. Within 48 hours after telephonic notification pursuant to subsection (1), the Office of Pipeline Safety shall notify the operator that either:
 - a. The Office of Pipeline Safety is directing the operator to have the portion of the pipeline that was removed tested by a laboratory to determine the cause or causes of the failure.
 - b. The Office of Pipeline Safety is not directing laboratory testing and the operator may discard the portion of the pipeline that was removed. The Office of Pipeline Safety shall confirm its notification in writing.
3. If the Office of Pipeline Safety directs laboratory testing pursuant to subsection (2)(a):
 - a. The Office of Pipeline Safety shall:
 - i. Determine the laboratory that will do the testing pursuant to subsection (4) and the period of time within which the testing is to be completed.
 - ii. Approve the number and types of tests to be performed.
 - iii. Notify the operator of its determinations pursuant to subsections (3)(a)(i) and (ii).
 - b. The operator shall:
 - i. Notify the Office of Pipeline Safety of the number and types of tests proposed by the operator.
 - ii. Notify the Office of Pipeline Safety of the date and time of any laboratory tests at least 20 days before the tests are done.
 - iii. At the request of the Office of Pipeline Safety, ensure that a representative of the Office of Pipeline Safety is permitted to observe any or all of the tests.
 - iv. Ensure that the original laboratory test results are provided to the Office of Pipeline Safety within 30 days of the completion of the tests.
 - v. Pay for the laboratory testing.
4. In determining a laboratory pursuant to subsection (3)(a)(i), the Office of Pipeline Safety shall:
 - a. Submit a written request to at least three different laboratories for bids to conduct the testing.
 - b. Consider the qualifications of the respondent laboratories to perform the testing, including:
 - i. Past experience in performing the required test or tests according to ASTM International standards.
 - ii. Any recognition that the laboratory may demonstrate with national or international laboratory accreditation bodies.
 - c. Select the laboratory that offers the optimum balance between cost and demonstrated ability to perform the required test or tests.
 - d. The Office of Pipeline Safety shall not select a laboratory pursuant to this subsection before either of the following, which ever occurs first:
 - i. The Office of Pipeline Safety has received written bids from at least three different laboratories.
 - ii. Thirty days from the date of the request for bids has passed.
- Q. Operators of a master meter system will file an annual report with the Commission on Commission Form 1-90/15M (1990 Edition and no future editions), "Annual Report for Calendar Year 20____, Small Operators of Gas Distribution System," incorporated by reference, and copies available from the Office of Pipeline Safety, 2200 North N. Central Avenue Ave., Suite Ste. 300, Phoenix, Arizona AZ 85004. This report will be filed with the Office of Pipeline Safety not later than April 15 for the preceding calendar year.
- R. The Commission may waive compliance with any of the aforementioned parts upon a finding that such a waiver is in the interest of public safety.
- S. To ensure compliance with provisions of this rule, the Commission or an authorized representative thereof, may enter the premises of an operator of a master meter system to inspect and investigate the property, books, papers, business methods, and affairs that pertain to the operation of the master meter system.
- T. All other Commission administrative rules are superseded to the extent they are in conflict with the pipeline safety provisions of this Article.